

CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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NO. 9

This issue contains:

U.S. Customs Service

General Notices

U.S. Court of International Trade

Slip Op. 01-15

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 1-2001)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of December 2000. The last notice was published in the CUSTOMS BULLETIN on January 3, 2001.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building -3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: February 7, 2001.

JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch.

The lists of recordations follow:

**COPYRIGHT, TRADEMARK, AND
TRADE NAME RECORDATIONS**

(No. 2-2001)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of January 2001. The last notice was published in the CUSTOMS BULLETIN on January 3, 2001.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building -3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: February 13, 2001.

JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch.

The lists of recordations follow:

02/05/01
0843:32U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN JANUARY 2001PAGE
DETAIL

1

| REC NUMBER | EFF DT | EXP DT | NAME OF COP, TMK, TNM OR MSK | OWNER NAME | RES |
|-------------------------------------|----------|----------|-----------------------------------|---------------------------------|-----|
| COP0100001 | 20010110 | 20010110 | VISION OF ESCAPLOWNE EPIISODE 5-8 | SUNRISE INCORPORATED | N |
| COP0100002 | 20010110 | 20010110 | POKEMON 2 B.A. MASTER | NINTENDO OF AMERICA INC. | N |
| COP0100003 | 20010110 | 20010110 | EXCITEBIKE 64 | NINTENDO OF AMERICA INC. | N |
| COP0100004 | 20010131 | 20010131 | PEACOCK (195P) | KENNETH CHONG | N |
| COP0100005 | 20010131 | 20010131 | PIRACHU'S RESCUE | NINTENDO OF AMERICA INC. | N |
| COP0100006 | 20010131 | 20010131 | PIRACHU'S RESCUE | NINTENDO OF AMERICA INC. | N |
| COP0100007 | 20010131 | 20010131 | POCKET MONSTERS STADIUM 2 | NINTENDO OF AMERICA INC. | N |
| 7 | | | | | |
| SUBTOTAL RECORDATION TYPE | | | | | |
| TMK0100001 | 20010102 | 20071118 | MODERN LAMP DESIGN | HAGGERTY ENTERPRISES, INC. | N |
| TMK0100002 | 20010102 | 20071216 | LAVA | HAGGERTY ENTERPRISES, INC. | N |
| TMK0100003 | 20010102 | 20050212 | YKK (STYLIZED) | YKK CORPORATION | N |
| TMK0100004 | 20010104 | 20040918 | GT (STYLIZED LETTERING) | GEORGIA INSTITUTE OF TECHNOLOGY | N |
| TMK0100005 | 20010104 | 20041002 | GEORGIA TECH | GEORGIA INSTITUTE OF TECHNOLOGY | N |
| TMK0100006 | 20010104 | 20040731 | YELLOW JACKETS | GEORGIA INSTITUTE OF TECHNOLOGY | N |
| TMK0100007 | 20010104 | 20040731 | THE LEGEND COLLECTION AND DESIGN | UNIVERSITY OF PITTSBURGH | N |
| TMK0100008 | 20010104 | 20080413 | DESIGN OF A PANTHER | UNIVERSITY OF PITTSBURGH | N |
| TMK0100009 | 20010109 | 20100622 | THE LEGEND COLLECTION AND DESIGN | LLADRO USA INC. | N |
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| SUBTOTAL RECORDATION TYPE | | | | | |
| TOTAL RECORDATIONS ADDED THIS MONTH | | | | | |
| 16 | | | | | |

U.S. Customs Service

February 14, 2001

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

U.S. Customs Service

General Notices

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF BOBBY PINS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation and modification of ruling letters and revocation of treatment relating to the classification of bobby pins.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke and modify ruling letters pertaining to the tariff classification of bobby pins and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before March 30, 2001.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-927-1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended,

and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke and modify ruling letters pertaining to the tariff classification of bobby pins. Although in this notice Customs is specifically referring to five rulings, New York Ruling Letter (NY) D82539, dated September 28, 1998, E89973, dated December 1, 1999, D88160, dated February 22, 1999, E86446, dated August 30, 1999, and E80512, dated April 9, 1999, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY D82539, E89973, D88160, E86446, and E80512, the classification of a product commonly referred to as a bobby pin was determined to be in subheading 9615.90.60, HTSUS. These ruling letters are set forth in Attachments "A" through "E" to this document. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error.

It is now Customs position that bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof, other, hair pins.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY D82539, and to modify E89973, D88160, E86446, and E80512, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HQ) 964784, 964785, 964876, 964787, and 964802 (*see* Attachments "F" through "J" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 2, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

September 28, 1998
CLA-2-96:RR:NC:SP:233 D82539
Category: Classification
Tariff No. 9615.90.6000

MS. ALPHA ROBINSON
LERNER NEW YORK
460 West 33 Street
New York, NY 10001

Re: The tariff classification of bobby pins from Hong Kong.

DEAR MS. ROBINSON:

In your letter dated September 17, 1998, you requested a tariff classification ruling.

The submitted samples are as follows:

Style #1294 bobby pin with butterfly
Style #3509 bobby pin with 11 imitation jet stones
Style #3509A bobby pin with 11 imitation clear stones
Style #3536 bobby pin with big flowers
Style #3539 bobby pin with small flowers
Style #3546 bobby pin with 14 imitation black stones
Style #3546A bobby pin with 14 imitation clear stones

All of the above bobby pins are made of 70% casting zinc and 30% steel. Your samples are being returned as requested.

The applicable subheading for the bobby pins will be 9615.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: other: other: other. The rate of duty will be 11% *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-466-5739.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

December 1, 1999

CLA-2-96:RR:NC:SP:233 E89973

Category: Classification

Tariff No. 9615.90.6000; 9615.19.6000

MR. ALAN WOODRUFF
LERNER NEW YORK
460 West 33rd Street
New York, NY 10001

Re: The tariff classification of a bobby pin and a barrette from Italy.

DEAR MR. WOODRUFF:

In your letter dated November 22, 1999, you requested a tariff classification ruling.

The submitted samples are as follows:

1. Style 0620 is a metal bobby pin measuring 2" in length. The top portion is decorated with metal and plastic beads.

2. Style 869 is a barrette made of a rectangular shaped ornament measuring 3" x 1 7/8", made of snakeskin print leather, attached to a metal spring hinge clip.

Your samples are being returned as requested.

The applicable subheading for the bobby pin will be 9615.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for combs, hair-slides and the like...other: other: other. The rate of duty will be 11% *ad valorem*.

The applicable subheading for the barrette will be 9615.19.6000, HTS, which provides for combs, hair-slides and the like: other: other. The rate of duty will be 11% *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-637-7061.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

February 22, 1999
CLA-2-96:RR:NC:SP:233 D88160
Category: Classification
Tariff No. 9615.19.6000; 9615.90.6000

MS. ALPHA ROBINSON
LERNER NEW YORK
460 West 33 Street
New York, NY 10001

Re: The tariff classification of hair accessories from Korea.

DEAR MS. ROBINSON:

In your letter dated February 11, 1999, you requested a tariff classification ruling.

The submitted samples are as follows:

Style 3539 "small flower bobby pin," consists of one pair of metal bobby pins. Each bobby pin is decorated with a flower made of imitation gemstones.

Style 3870 "stone bee salon clip," consists of one pair of metal spring hinge hair clips. Each clip is decorated with a bee made of imitation gemstones.

Style 3872 "stone butterfly salon clip," consists of one pair of metal spring hinge

hair clips. Each clip is decorated with a butterfly made of metal and imitation gemstones.

Style 3874 "flower stone salon clip," consists of one pair of metal spring hinge hair clips. Each clip is decorated with a flower made of metal and imitation gemstones.

Style 4509 "pearls on bobby pin," consists of one pair of metal bobby pins. Each bobby pin is decorated on one side with a row of imitation pearls.

Your samples are being returned as requested.

The applicable subheading for the hair clips, Styles 3870, 3872 and 3874, will be 9615.19.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for combs, hair-slides and the like: other: other. The rate of duty will be 11 percent *ad valorem*.

The applicable subheading for the bobby pins, Styles 3539 and 4509, will be 9615.90.6000, HTS, which provides for:...hairpins, curling pins, curling grips, hair-curlers and the like,...other: other: other. The rate of duty will be 11 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-637-7061.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT D]

August 30, 1999

CLA-2-96:RR:NC:SP:233 E86446

Category: Classification

Tariff No. 9615.19.6000; 9615.90.6000; 9615.19.4000

MR. ALAN WOODRUFF
LERNER NEW YORK
460 West 33rd Street
New York, NY 10001

Re: The tariff classification of barrettes, bobby pins and a comb from Korea.

DEAR MR. WOODRUFF:

In your letter dated August 19, 1999, you requested a tariff classification ruling. The submitted samples are as follows:

1. Style 4582, which consists of a curved oval shaped metal barrette attached to a metal hinged snap clasp. The barrette measures approximately 1 inch in length and is covered entirely with imitation gemstones.

2. Style 4584, which consists of one pair of rectangular shaped metal barrettes

with a metal hinged snap clasp. Each barrette measures 1½ inches in length and is covered entirely with glass beads.

3. Style 4585, which consists of one pair of steel bobby pins, each measuring 2 inches in length. The bobby pins are covered with strung glass beads. At the end of each bobby pin is a flower made of strung glass beads.

4. Style 4587, which consists of one pair of metal hair combs. Each comb features four teeth, or prongs, and a butterfly made of strung glass beads.

Your samples are being returned as requested.

The applicable subheading for Styles 4582 and 4584, the barrettes, will be 9615.19.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for combs, hair-slides and the like... other: other. The rate of duty will be 11% *ad valorem*.

The applicable subheading for Style 4585, the bobby pins, will be 9615.90.6000, HTS, which provides for combs, hair-slides and the like; hairpins, curling pins, curling grips...other: other: other. The rate of duty will be 11% *ad valorem*.

The applicable subheading for Style 4587, the combs, will be 9615.19.4000, HTS, which provides for combs, hair-slides and the like... other: combs: valued over \$4.50 per gross. The rate of duty will be 28.8 cents/gross plus 4.6% *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-637-7061.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT E]

April 9, 1999

CLA-2-96:RR:NC:SP:233 E80512

Category: Classification

Tariff No. 9615.19.6000; 9615.90.6000

MS. GLADYS DIAZ

JOHN T. RAIA CUSTOMHOUSE BROKERS

One Industrial Plaza, Building D
Valley Stream, NY 11581

Re: The tariff classification of hair ornaments from China.

DEAR MS. DIAZ:

In your undated letter received by this office on April 8, 1999, on behalf of Panaria International Inc., you requested a tariff classification ruling.

The following samples were submitted with your request:

one metal hinged hair clip measuring approximately 1 1/4 inches in length,

attached to which is a metal butterfly which is coated with iridescent paint, and

one metal bobby pin measuring approximately 2 1/4 inches in length, attached to which is a metal butterfly which is coated with iridescent paint.

The applicable subheading for hair clip will be 9615.19.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for combs, hair-slides and the like... other. The rate of duty will be 11 percent *ad valorem*.

The applicable subheading for the bobby pin will be 9615.90.6000, HTS, which provides for combs, hair-slides and the like, hairpins, curling pins... other. The rate of duty will be 11 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-637-7061.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT F]

CLA-2 RR:CR:GC 964784ptl

Category: Classification

Tariff No. 9615.90.30

MS. ALPHA ROBINSON
LERNER New York
460 West 33rd Street
New York, NY 10001

Re: Bobby pins; NY D82539 revoked.

DEAR MS. ROBINSON:

In NY D82539, which the Director, National Commodity Specialist Division, New York, issued to you on September 28, 1998, several varieties of an article known as a bobby pin were classified, under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 9615.90.60, HTSUS, which provides for combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: other: other: other. We have reviewed that ruling and determined that the classification is incorrect. The correct classification of the articles is in subheading 9615.90.30, HTSUS, which provides for hair pins, pursuant to the analysis set forth below.

Facts:

The articles classified in NY D82539 are as follows:

| | |
|--------------|--|
| Style #1294 | bobby pin with butterfly |
| Style #3509 | bobby pin with 11 imitation jet stones |
| Style #3905A | bobby pin with 11 imitation clear stones |
| Style #3536 | bobby pin with big flowers |
| Style #3539 | bobby pin with small flowers |

Style #3546
Style #3546A

bobby pin with 14 imitation black stones
bobby pin with 14 imitation clear stones.

Issue:

What is the classification of bobby pins?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9615 Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof:

Combs, hair-slides and the like:

* * *

9615.90 Other

* * *

9615.90.30 Hair pins.

9615.90.60 Other:

In this instance, neither the HTSUS, its legislative history, nor the ENs define the term "hairpins". In the absence of a definition of a term in the tariff or its legislative history, the term's correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)). Since NY D82539 was issued, additional research on the subject by Customs has produced the following information. The Random House *Dictionary of the English Language*, Unabridged (1973), page 637, defines "hair pin" as "1. a slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress." The same dictionary, page 164 defines a "bobby pin" as "a flat, springlike metal hairpin having the prongs held close together by tension." The Compact Edition of the Oxford English Dictionary, Vol III, (1987), page 78, identifies "bobby pin" as being a U.S. term and defines it as "A kind of sprung hair-pin or small clip, orig. for use with bobbed hair." These definitions imply that a bobby pin is a type of hairpin.

The tariff provision for hairpins is considered an *eo nomine* provision, in that it describes goods by a specific name. A fundamental rule of tariff classification is that an *eo nomine* provision that names an article without terms of limitation and, absent evidence of contrary legislative intent, is deemed to include all forms of the article. *Nootka Packing Co., v. United States*, 22 CCPA 464, T.D. 47464 (1935).

Bobby pins and hair pins are used similarly for the purpose of holding a specific portion of the users hair in a particular position. Both are functional articles used

to keep one's hair in place. Because of this similarity of use and function, and because of the common understanding and definition of the term "bobby pin", we have determined that bobby pins are included within the coverage of *eo nomine* provision for hairpins and by application of GRI 1, are classified in subheading 9615.90.30, HTSUS.

Holding:

Bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for: Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: [o]ther; [h]air pins.

NY D82539, dated September 28, 1998, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

CLA-2 RR:CR:GC 964802ptl
Category: Classification
Tariff No. 9615.90.30

MR. ALAN WOODRUFF
LERNER NEW YORK
460 West 33rd Street
New York, NY 10001

Re: Bobby pins; NY E89973 modified.

DEAR MR. WOODRUFF:

In NY E89973, which the Director, National Commodity Specialist Division, New York, issued to you on December 1, 1999, two articles were classified, under the Harmonized Tariff Schedule of the United States (HTSUS). One of them, a variety of an article known as a bobby pin, was classified in subheading 9615.90.60, HTSUS, which provides for combs hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: other: other: other. We have reviewed that ruling and determined that the classification of the bobby pins is incorrect. The correct classification of the bobby pins is in subheading 9615.90.30, HTSUS, which provides for hair pins, pursuant to the analysis set forth below. Classification of a barrette, the other article in NY E89973 is not altered by this ruling.

Facts:

The article, referred to as a bobby pin, classified in NY E80512 is described as follows:

| | |
|-------------|---|
| Style #0620 | a metal bobby pin, 2" in length, the top portion is decorated with metal and plastic beads. |
|-------------|---|

Issue:

What is the classification of bobby pins?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9615 Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof:

Combs, hair-slides and the like:

* * *

9615.90 Other

* * *

9615.90.30

Hair pins.

9615.90.60

Other:

In this instance, neither the HTSUS, its legislative history, nor the ENs define the term "hairpins". In the absence of a definition of a term in the tariff or its legislative history, the term's correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)) Since NY E89973 was issued, additional research on the subject by Customs has produced the following information. The Random House *Dictionary of the English Language*, Unabridged (1973), page 637, defines "hair pin" as "1. a slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress." The same dictionary, page 164 defines a "bobby pin" as "a flat, springlike metal hairpin having the prongs held close together by tension." The Compact Edition of the Oxford English Dictionary, Vol III, (1987), page 78, identifies "bobby pin" as being a U.S. term and defines it as "A kind of sprung hair-pin or small clip, orig. for use with bobbed hair." These definitions imply that a bobby pin is a type of hairpin.

The tariff provision for hairpins is considered an *eo nomine* provision, in that it describes goods by a specific name. A fundamental rule of tariff classification is that an *eo nomine* provision that names an article without terms of limitation and, absent evidence of contrary legislative intent, is deemed to include all forms of the article. *Nootka Packing Co., v. United States*, 22 CCPA 464, T.D. 47464 (1935).

Bobby pins and hair pins are used similarly for the purpose of holding a specific portion of the users hair in a particular position. Both are functional articles used to keep one's hair in place. Because of this similarity of use and function, and because of the common understanding and definition of the term "bobby pin", we have determined that bobby pins are included within the coverage of *eo nomine* provision for hairpins and by application of GRI 1, are classified in subheading 9615.90.30, HTSUS.

Holding:

Bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for: Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: [o]ther; [h]air pins.

NY E89973, dated December 1, 1999, is modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

CLA-2 RR:CR:GC 964786ptl
Category: Classification
Tariff No. 9615.90.30

Ms. ALPHA ROBINSON
LERNER NEW YORK
460 West 33rd Street
New York, NY 10001

Re: Bobby pins; NY D88160 modified.

DEAR Ms. ROBINSON:

In NY D88160, which the Director, National Commodity Specialist Division, New York, issued to you on February 22, 1999, several hair accessories were classified, under the Harmonized Tariff Schedule of the United States (HTSUS). Among them, two varieties of an article known as a bobby pin were classified in subheading 9615.90.60, HTSUS, which provides for combs hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: other: other: other. We have reviewed that ruling and determined that the classification of the bobby pins is incorrect. The correct classification of the bobby pins is in subheading 9615.90.30, HTSUS, which provides for hair pins, pursuant to the analysis set forth below. Classification of the other articles in NY D88160 is not altered by this ruling.

Facts:

The bobby pins classified in NY D88160 are as follows:

Style #3539 "Small flower bobby pin". A pair of metal bobby pins with each bobby pin decorated with a flower made of small imitation gemstones.

Style #4509 "Pearls on bobby pin". A pair of metal bobby pins with each bobby pin decorated on one side with a row of imitation pearls.

Issue:

What is the classification of bobby pins?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff

schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9615 Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof:

Combs, hair-slides and the like:

* * *

9615.90 Other

* * *

9615.90.30

Hair pins.

9615.90.60

Other:

In this instance, neither the HTSUS, its legislative history, nor the ENs define the term "hairpins". In the absence of a definition of a term in the tariff or its legislative history, the term's correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)) Since NY D88160 was issued, additional research on the subject by Customs has produced the following information. The Random House *Dictionary of the English Language*, Unabridged (1973), page 637, defines "hair pin" as "1. a slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress." The same dictionary, page 164 defines a "bobby pin" as "a flat, springlike metal hairpin having the prongs held close together by tension." The Compact Edition of the Oxford English Dictionary, Vol III, (1987), page 78, identifies "bobby pin" as being a U.S. term and defines it as "A kind of sprung hair-pin or small clip, orig. for use with bobbed hair." These definitions imply that a bobby pin is a type of hairpin.

The tariff provision for hairpins is considered an *eo nomine* provision, in that it describes goods by a specific name. A fundamental rule of tariff classification is that an *eo nomine* provision that names an article without terms of limitation and, absent evidence of contrary legislative intent, is deemed to include all forms of the article. *Nootka Packing Co., v. United States*, 22 CCPA 464, T.D. 47464 (1935).

Bobby pins and hair pins are used similarly for the purpose of holding a specific portion of the users hair in a particular position. Both are functional articles used to keep one's hair in place. Because of this similarity of use and function, and because of the common understanding and definition of the term "bobby pin", we have determined that bobby pins are included within the coverage of *eo nomine* provision for hairpins and by application of GRI 1, are classified in subheading 9615.90.30, HTSUS.

Holding:

Bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for: Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: [o]ther; [h]air pins.

NY D88160, dated February 22, 1999, is modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

CLA-2 RR:CR:GC 964787ptl
Category: Classification
Tariff No. 9615.90.30

MR. ALAN WOODRUFF
LERNER NEW YORK
460 West 33rd Street
New York, NY 10001

Re: Bobby pins; NY E86446 modified.

DEAR MR. WOODRUFF:

In NY E86446, which the Director, National Commodity Specialist Division, New York, issued to you on August 30, 1999, several hair accessories were classified, under the Harmonized Tariff Schedule of the United States (HTSUS). Among them, a variety of an article known as a bobby pin was classified in subheading 9615.90.60, HTSUS, which provides for combs hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: other: other: other. We have reviewed that ruling and determined that the classification of the bobby pins is incorrect. The correct classification of the bobby pins is in subheading 9615.90.30, HTSUS, which provides for hair pins, pursuant to the analysis set forth below. Classification of the other articles in NY E86446 is not altered by this ruling.

Facts:

The article, referred to as a bobby pin, classified in NY E86446 is described as follows:

Style #4585 a pair of steel bobby pins, 2" in length, covered with strung glass beads and a flower made of strung glass beads at the end.

Issue:

What is the classification of bobby pins?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commen-

tary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9615 Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof:

Combs, hair-slides and the like:

* * *

9615.90 Other

* * *

9615.90.30 Hair pins.

9615.90.60 Other:

In this instance, neither the HTSUS, its legislative history, nor the ENs define the term "hairpins". In the absence of a definition of a term in the tariff or its legislative history, the term's correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)) Since NY E86446 was issued, additional research on the subject by Customs has produced the following information. The Random House *Dictionary of the English Language*, Unabridged (1973), page. 637, defines "hair pin" as "1. a slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress." The same dictionary, page 164 defines a "bobby pin" as "a flat, springlike metal hairpin having the prongs held close together by tension." The Compact Edition of the Oxford English Dictionary, Vol III, (1987), page 78, identifies "bobby pin" as being a U.S. term and defines it as "A kind of sprung hair-pin or small clip, orig. for use with bobbed hair." These definitions imply that a bobby pin is a type of hairpin.

The tariff provision for hairpins is considered an *eo nomine* provision, in that it describes goods by a specific name. A fundamental rule of tariff classification is that an *eo nomine* provision that names an article without terms of limitation and, absent evidence of contrary legislative intent, is deemed to include all forms of the article. *Nootka Packing Co., v. United States*, 22 CCPA 464, T.D. 47464 (1935).

Bobby pins and hair pins are used similarly for the purpose of holding a specific portion of the users hair in a particular position. Both are functional articles used to keep one's hair in place. Because of this similarity of use and function, and because of the common understanding and definition of the term "bobby pin", we have determined that bobby pins are included within the coverage of *eo nomine* provision for hairpins and by application of GRI 1, are classified in subheading 9615.90.30, HTSUS.

Holding:

Bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for: Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: [o]ther; [h]air pins.

NY E86446, dated August 30, 1999, is modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT J]

CLA-2 RR:CR:GC 964802ptl

Category: Classification

Tariff No. 9615.90.30

Ms. GLADYS DIAZ
JOHN T. RAJA CUSTOMHOUSE BROKERS
One Industrial Plaza, Building D
Valley Stream, NY 11581

Re: Bobby pins; NY E80512 modified.

DEAR Ms. DIAZ:

In NY E80512, which the Director, National Commodity Specialist Division, New York, issued to you on behalf of Panaria International, Inc., on April 8, 1999, two articles were classified, under the Harmonized Tariff Schedule of the United States (HTSUS). One of them, a variety of an article known as a bobby pin, was classified in subheading 9615.90.60, HTSUS, which provides for combs hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof; other: other. We have reviewed that ruling and determined that the classification of the bobby pins is incorrect. The correct classification of the bobby pins is in subheading 9615.90.30, HTSUS, which provides for hair pins, pursuant to the analysis set forth below. Classification of the hair clip, the other article in NY E80512 is not altered by this ruling.

Facts:

The article, referred to as a bobby pin, classified in NY E80512 is described as follows:

A metal bobby pin measuring approximately 2¼ inches in length with a metal, iridescent painted, butterfly attached.

Issue:

What is the classification of bobby pins?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9615 Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof:

Combs, hair-slides and the like:

| | |
|------------|-------------------|
| | * * * |
| 9615.90 | Other |
| | * * * |
| 9615.90.30 | Hair pins. |
| 9615.90.60 | Other: |

In this instance, neither the HTSUS, its legislative history, nor the ENs define the term "hairpins". In the absence of a definition of a term in the tariff or its legislative history, the term's correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)) Since NY E80512 was issued, additional research on the subject by Customs has produced the following information. The Random House *Dictionary of the English Language*, Unabridged (1973), page 637, defines "hair pin" as "1. a slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress." The same dictionary, page 164 defines a "bobby pin" as "a flat, springlike metal hairpin having the prongs held close together by tension." The Compact Edition of the Oxford English Dictionary, Vol III, (1987), page 78, identifies "bobby pin" as being a U.S. term and defines it as "A kind of sprung hair-pin or small clip, orig. for use with bobbed hair." These definitions imply that a bobby pin is a type of hairpin.

The tariff provision for hairpins is considered an *eo nomine* provision, in that it describes goods by a specific name. A fundamental rule of tariff classification is that an *eo nomine* provision that names an article without terms of limitation and, absent evidence of contrary legislative intent, is deemed to include all forms of the article. *Nootka Packing Co., v. United States*, 22 CCPA 464, T.D. 47464 (1935).

Bobby pins and hair pins are used similarly for the purpose of holding a specific portion of the users hair in a particular position. Both are functional articles used to keep one's hair in place. Because of this similarity of use and function, and because of the common understanding and definition of the term "bobby pin", we have determined that bobby pins are included within the coverage of *eo nomine* provision for hairpins and by application of GRI 1, are classified in subheading 9615.90.30, HTSUS.

Holding:

Bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for: Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: [o]ther; [h]air pins.

NY E80512, dated April 9, 1999, is modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF TRAVEL DOCUMENT HOLDERS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letters and treatment relating to the classification of travel document holders.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify nine rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of travel document holders. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before March 30, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textiles Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch: (202) 927-2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other in-

formation necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke nine rulings relating to the tariff classification of travel document holders. Although in this notice Customs is specifically referring to Headquarters Ruling Letter (HQ) 961827, dated April 5, 1999, New York Ruling Letter (NY) A86873, dated September 13, 1996, Port Decision (PD) A81013, dated March 26, 1996, PD A81014, dated March 26, 1996, PD A81015, dated March 26, 1996, PD A81016, dated March 26, 1996, PD A88536, dated October 24, 1996, PD B84557, dated May 19, 1997, and PD B84558, dated May 19, 1997, (attachments A, B, C, D, E, F, G, H and I, respectively), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

Customs has consistently classified travel document holders in heading 4202, HTSUSA, which provides for, among other things, trunks, briefcases, traveling bags, handbags, wallets, purses and map cases. At the subheading level, Customs has classified travel document holders in subheading 4202.32 HTSUSA, which provides for articles of a kind normally carried in the pocket or handbag, subheading 4202.92.45, HTSUSA, which provides for, among other things, travel or similar bags, and subheading 4202.92, HTSUSA, which provides for other containers or cases.

Based on our analysis of the scope of the terms of the subheading to 4202, HTSUSA, the Legal Notes, and the Explanatory Notes, it is

now Customs' position that travel document holders of the type discussed herein, are classifiable in 4202.92.60, HTSUSA.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 961827, NY A86873, PD A81013, PD A81014, PD A81015, PD A81016, PD A88536, PD B84557, and PD B84558 as appropriate, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 963320, HQ 964788, HQ 964789, and HQ 964790 (attachments J, K, L and M, respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 29, 2001.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

April 5, 1999
CLA-2 RR:CR:TE 961827 GGD
Category: Classification
Tariff No. 4202.92.4500

PAULA M. CONNELLY, ESQUIRE
MIDDLETON & SHRULL
44 Mall Road, Suite 208
Burlington, Massachusetts 01803-4530

Re: Reconsideration of Port Ruling Letter (PD) C84151; Travel Document Holder.

DEAR MS. CONNELLY:

This letter is in response to your request of March 23, 1998, on behalf of your client, The GEM Group, Inc., for reconsideration of Port Ruling Letter (PD) C84151, issued February 26, 1998, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an article identified as a travel document holder that is made in China. A sample was submitted with the request. Subsequent to your original request and submission, an additional written submission, dated March 3, 1999, was received and considered.

Facts:

In PD C84151, Customs classified the article at issue in subheading 4202.92.4500, HTSUSA, which provides for "Trunks... attache cases, briefcases... handbags... wallets... map cases... and similar containers...: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other."

The article at issue, described in PD C84151 as a "travel document case," and identified by style number 8400, is described in advertising/marketing literature as a "Document Holder." The article consists of a jacket or case which is zippered on 3 sides and which measures approximately 10-1/4 inches in height by 5-1/4 inches in width by 1 inch in depth (in the closed position). The case is black in color and has an outer layer composed of a woven textile fabric that has been coated, covered, or laminated with a cellular plastic identified as polyurethane (PU). The plastic surface of the layer faces outward. There is a flat, open, full-height pocket on the article's exterior front and a wrist strap attached to the zipper pull. Plastic foam and paperboard are sealed between the outer and inner surfaces of the article.

The interior surfaces of the case are also constructed of fabric-backed PU plastic. The case has a flat, open-top pocket which extends the full height and width of the case. Overlying that pocket, on the right interior side, are two flat, full-height pockets (one on top of the other). One of these pockets has a zippered closure while the other is sleeve-like and open on the left. The interior left side of the case features two flat, full-height pockets (again, one on top of the other and both stacked over the largest pocket noted above). Attached on top of these pockets are eight slots for business or credit cards and one flat pocket with a transparent plastic window for an identification card. There also is a pen holder attached to the spine of the case. The article is imported without contents.

Issue:

Whether the article is classified under heading 4820, HTSUSA, which covers, among other goods, articles of stationery including cover boards and book jackets; under heading 3926, HTSUSA, which covers other articles of plastics; or under heading 4202, HTSUSA, which covers, in part, attache cases, handbags, wallets, map cases, and similar containers.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Among other merchandise, chapter 48, HTSUSA, covers articles of paper or of paperboard. Among the items covered by heading 4820, are notebooks, letter pads, memorandum pads, diaries and similar articles; binders (looseleaf or other), folders, and other articles of stationery, including cover boards and book jackets. The EN to heading 4820 indicate that the heading covers various articles of stationery including (in addition to the examples noted above) notebooks of all kinds, file covers, files (other than box files), and portfolios. The EN also suggest that the goods of the heading may be bound with materials other than paper (*e.g.*, leather, plastics or textile material) and have reinforcements or fittings of metal, plastics, etc. Although the document holder's primary purpose is apparently related to the organization of documents, cards, and papers, the item is not an article of stationery and is imported without stationery or any other contents. The case is not classifiable under heading 4820.

Among other goods, chapter 42, HTSUSA, covers travel goods, handbags and similar containers. Heading 4202 provides for "attache cases...handbags...wallets...map cases...and similar containers...." The exemplars named in heading 4202 have in common the purpose of organizing, storing, protecting, and carrying various items. EN (c) to heading 4202 indicates that the heading does not cover articles which, although they may have the character of containers, are not

similar to those enumerated in the heading, for example, book covers and reading jackets, file-covers, document-jackets, and which are wholly or mainly covered with leather, sheeting of plastics, etc. Such articles fall in heading 4205 if made of (or covered with) leather or composition leather, and in other chapters if made of (or covered with) other materials.

Among other merchandise, chapter 39, HTSUSA, covers plastics and articles thereof. In pertinent part, note 2(ij) to chapter 39, HTSUSA, states that "[t]his chapter does not cover...trunks, suitcases, handbags or other containers of heading 4202." Heading 3926, HTSUSA, covers "Other articles of plastics and articles of other materials of headings 3901 to 3914." The EN to heading 3926 indicate that the articles covered by the heading include protective bags, file-covers, document-jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

If the document holder is *prima facie* classifiable under heading 4202, HTSUSA, it may not be classified under heading 3926. The specific exemplars and language set forth in heading 4202 are clearly more precise than the term "[o]ther articles of plastics..." contained in heading 3926. It must be determined, however, whether the subject article's primary purpose is to organize, store, protect, and carry various items, or merely has the character of 4202 containers, functioning mainly as a document jacket or file cover. Although the travel document holder is only one inch in depth and is not designed to carry objects that would normally be carried in an attache case or briefcase, the article does possess the physical attributes of articles classifiable in heading 4202, HTSUSA, and is most similar to map cases, wallets, and small handbags. It is designed and marketed to organize, store, protect, and carry documents, cards, currency, a pen, and other small personal effects during travel. Like many of the travel goods of heading 4202, the travel document holder also features a carrying strap, which file covers and document jackets classifiable under heading 3926 generally do not. We find that the article is classifiable under heading 4202. As such, it is precluded from classification under heading 3926 by note 2(ij) to chapter 39, HTSUSA. The travel document holder is classified in subheading 4202.92.4500, HTSUSA. See also PD B84558, issued May 19, 1997, and New York Ruling Letter (NY) A84038, issued June 20, 1996, with respect to the classification of similar document cases.

Holding:

The travel document holder identified by style no. 8400, is classified in subheading 4202.92.4500, HTSUSA, the provision for "Trunks...handbags...wallets...map cases...and similar containers...: Other: With outer surface of sheeting of plastic...: Travel, sports and similar bags: Other." The general column one duty rate is 20 percent *ad valorem*.

PD C84151, issued February 26, 1998, is hereby affirmed.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

September 13, 1996
CLA-2-42:RR:NC:WA:341 A86873
Category: Classification
Tariff No. 4202.32.2000

Ms. MARIA GALLEGO-TAVERAS
PATRICK POWERS CUSTOM BROKERS, INC.
27 Blake Ave
Lynbrook, NY 11563

Re: The tariff classification of a PVC document case from China.

DEAR MS. GALLEGO-TAVERAS:

In your letter dated August 12, 1996, on behalf of Fashion-Craft Excello, you requested a reconsideration of ruling PD 81015 for a PVC document base.

You have requested a reconsideration for ruling PD 81015 dated 3-26-96. We have reviewed your request and the sample which was ruled upon, style 4451, was said to be an unlined PVC document case designed to hold tickets and a passport during travel. The article was correctly classified under 4202.32.2000. The applicable subheading for Style 4451, the PVC document case, will be 4202.32.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of sheeting of plastic, other. The rate of duty will be 20 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212-466-5893.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

March 26, 1996
CLA-2-42:RI:130:G25:DJP
Category: Classification
Tariff No. 4202.32.2000

Ms. MARIA GALLEGO
POWERS CUSTOMS BROKERS INC.
P.O. Box 30155
Jamaica, New York 11430

Re: The tariff classification of a DOCUMENT CASE from China.

DEAR MS. GALLEGO:

In your letter dated February 27, 1996, you requested a tariff classification ruling on behalf of the importer Fashioncraft-Excello, Inc., Garden City Park, New York.

The sample submitted, style #6650, is a ticket/passport case.

The case is approximately 9" X 42" (closed), has an outer surface of PVC and is unlined. The purpose of the case is to hold tickets and a passport during travel.

The applicable subheading for style #6650 will be 4202.32.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of sheeting of plastic, other. The rate of duty will be 20 percent *ad valorem*.

Your sample is being returned as requested.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

RICHARD A. BARRETTE,
Service/Area Port Director,
Providence, R.I.

[ATTACHMENT D]

March 26, 1996
CLA-2-42:RI:130:G25:DJP
Category: Classification
Tariff No. 4202.32.1000

MS. MARIA GALLEGO
CUSTOMS BROKERS INC.
P.O. Box 30155
Jamaica, New York 11430

Re: The tariff classification of a DOCUMENT CASE from China.

DEAR MS. GALLEGO:

In your letter dated February 27, 1996, you requested a tariff classification ruling on behalf of the importer Fashioncraft-Excello, Inc., Garden City Park, New York.

The sample submitted, style #3360, is a ticket/passport case.

The case is approximately 10" X 5" (closed), has an outer surface of PVC/textile backed and is unlined. The purpose of the case is to hold tickets and a passport during travel.

The applicable subheading for style #3360 will be 4202.32.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of sheeting of plastic, of reinforced or laminated plastic. The rate of duty will be 12.1 cents per kg plus 4.6 percent *ad valorem*.

Your sample is being returned as requested.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

RICHARD A. BARRETTE,
Service/Area Port Director,
Providence, R.I.

[ATTACHMENT E]

March 26, 1996
CLA-2-42:RI:130:G25:DJP
Category: Classification
Tariff No. 4202.32.2000

Ms. MARIA GALLEG0
POWERS CUSTOMS BROKERS INC.
P.O. Box 30155
Jamaica, New York 11430

Re: The tariff classification of a DOCUMENT CASE from China.

DEAR MS. GALLEG0:

In your letter dated February 27, 1996, you requested a tariff classification ruling on behalf of the importer Fashioncraft-Excello, Inc., Garden City Park, New York.

The sample submitted, style #4451, is a ticket/passport case.

The case is approximately 92" X 42" (closed), has an outer surface of PVC and is unlined. The purpose of the case is to hold tickets and a passport during travel.

The applicable subheading for style #4451 will be 4202.32.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of sheeting of plastic, other. The rate of duty will be 20 percent *ad valorem*.

Your sample is being returned as requested.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

RICHARD A. BARRETTE,
Service/Area Port Director,
Providence, R.I.

[ATTACHMENT F]

March 26, 1996
CLA-2-42:RI:130:G25:DJP
Category: Classification
Tariff No. 4202.32.1000

Ms. MARIA GALLEG0
POWERS CUSTOMS BROKERS INC.
P.O. Box 30155
Jamaica, New York 11430

Re: The tariff classification of a DOCUMENT CASE from China.

DEAR MS. GALLEG0:

In your letter dated February 27, 1996, you requested a tariff classification ruling on behalf of the importer Fashioncraft-Excello, Inc., Garden City Park, New York.

The sample submitted, style #3325, is a document case similar to a ticket case. The case is approximately 11" X 5" (closed), has an outer surface of PVC/textile backed and is unlined. The purpose of the case is to hold documents during travel.

The applicable subheading for style #3325 will be 4202.32.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of sheeting of plastic, of reinforced or laminated plastic. The rate of duty will be 12.1 cents per kg plus 4.6 percent *ad valorem*.

Your sample is being returned as requested.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

RICHARD A. BARRETTE,
Service/Area Port Director,
Providence, R.I.

[ATTACHMENT G]

October 24, 1996
CLA-2-42:RI:130:G25:DJP
Category: Classification
Tariff No. 4202.32.1000

MS. MARIA GALLEGO
27 Blake Avenue
Lynbrook, NY 11563

Re: The tariff classification of a ticket/passport case from China.

DEAR MS. GALLEGO:

In your letter dated October 9, 1996, you requested a tariff classification ruling on behalf of Customcraft Industries, Inc., 50 Rose Place, Garden City Park, NY.

The sample submitted, style #4451, is a ticket/passport case. The case is approximately 9 1/2" x 4 1/2" (closed) and has an outer surface of PVC sheet with a textile backing. The purpose of the case is to hold tickets and a passport during travel.

The applicable subheading for Style #4451 will be 4202.32.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of sheeting of plastic, of reinforced or laminated plastic. The rate of duty will be 12.1¢/kg + 4.6 per cent *ad valorem*.

Your sample is being returned as requested.

Note: PD A81015 (3-26-96) and reconsideration NY A86873 (9-13-96) involved a document case style #4451. The importer was also located at 50 Rose Place, Garden City Park, NY. The case ruled on was the same style number, but the outer surface of PVC did not have a textile backing.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a

copy, this ruling should be brought to the attention of the Customs Officer handling the transaction.

RICHARD A. BARRETTE,
*Service/Area Port Director,
Providence, R.I.*

[ATTACHMENT H]

May 19, 1997
CLA-2-42 SE:C:D G02 B84557
Category: Classification
Tariff No. 4202.92.4500

MARIA GALLEGO-TAVERAS
PATRICK POWERS CUSTOMS BROKERS, INC.
27 Blake Avenue
Lynbrook, New York 11563-2505

Re: The tariff classification of a travel document case with outer surface of plastic sheeting from China.

DEAR MS. GALLEGO-TAVERAS:

In your letter dated April 23, 1997, you requested a tariff classification ruling on behalf of your client, Customcraft Industries of Garden City Park, New York.

The item which Customcraft Industries intends to import is a travel document case (style #3375) measuring approximately 10 x 1 x 5 1/2 inches and having an outer surface of PVC (backed by a woven textile fabric), an open top pocket on one exterior face, an open top pocket of clear plastic sheeting material on each of the two interior faces, and a zippered closure extending around three edges of the case having attached to it a looped carry strap/zipper pull made from the same material as the body of the bag.

The applicable subheading for the travel document case will be 4202.92.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags, with outer surface of sheeting of plastic. The rate of duty will be 20 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). The sample is being returned herewith in accordance with your request.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

ARTIS M. MORGAN, JR.,
*Port Director,
Seattle.*

[ATTACHMENT I]

May 19, 1997
CLA-2-42 SE:C:D G02 B84558
Category: Classification
Tariff No. 4202.92.4500

MARIA GALLEGO-TAVERAS
PATRICK POWERS CUSTOMS BROKERS, INC.
27 Blake Avenue
Lynbrook, New York 11563-2505

Re: The tariff classification of a travel document case with outer surface of plastic sheeting from China.

DEAR MS. GALLEGO-TAVERAS:

In your letter dated April 23, 1997, you requested a tariff classification ruling on behalf of your client, Customcraft Industries of Garden City Park, New York.

The item which Customcraft Industries intends to import is a travel document case (style #3415) measuring approximately 10 x 1 x 5 1/4 inches and having an outer surface of PVC (backed by a woven textile fabric), an open top pocket on one exterior face, an open top pocket of clear plastic sheeting material on each of the two interior faces, and a zippered closure extending around three edges of the case having an attached carry strap/zipper pull of looped textile webbing.

The applicable subheading for the travel document case will be 4202.92.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags, with outer surface of sheeting of plastic. The rate of duty will be 20 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). The sample is being returned herewith in accordance with your request.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

ARTIS M. MORGAN, JR.,
Port Director,
Seattle.

[ATTACHMENT J]

CLA-2-RR:CR:TE 963320 JFS
Category: Classification
Tariff No. 4202.92.9060

PAULA M. CONNELLY, ESQUIRE
MIDDLETON & SHRULL
44 Mall Road, Suite 208
Burlington, Massachusetts 01803-4530

Re: Revocation of HQ 961827, dated April 5, 1999; Classification of Travel Document Holder; Heading 4202, HTSUSA.

DEAR MS. CONNELLY:

This letter is to inform you that Customs has reconsidered Headquarters Ruling

Letter (HQ) 961827, dated April 5, 1999, addressed to you on behalf of your client the GEM Group, Inc., concerning the classification of a document holder under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, it has been determined that the classification of the document holder in 4202.92.4500, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes HQ 961827.

Facts:

HQ 961827 affirmed Port Ruling Letter (PD) C84151, issued February 26, 1998. In PD C84151, Customs classified the document holder at issue in Heading 4202, HTSUSA, which covers, among other things, trunks, cases, bags and various containers. At the eight digit level, the document holder was classified under subheading 4202.92.4500, HTSUSA, as a "travel, sports and similar" bag.

The document holder that is the subject of this ruling was described in HQ 961827 as follows:

The article at issue, described in PD C84151 as a "travel document case," and identified by style number 8400, is described in advertising/marketing literature as a "Document Holder." The article consists of a jacket or case which is zippered on 3 sides and which measures approximately 10-1/4 inches in height by 5-1/4 inches in width by 1 inch in depth (in the closed position). The case is black in color and has an outer layer composed of a woven textile fabric that has been coated, covered, or laminated with a cellular plastic identified as polyurethane (PU). The plastic surface of the layer faces outward. There is a flat, open, full-height pocket on the article's exterior front and a wrist strap attached to the zipper pull. Plastic foam and paperboard are sealed between the outer and inner surfaces of the article.

The interior surfaces of the case are also constructed of fabric-backed PU plastic. The case has a flat, open-top pocket which extends the full height and width of the case. Overlying that pocket, on the right interior side, are two flat, full-height pockets (one on top of the other). One of these pockets has a zippered closure while the other is sleeve-like and open on the left. The interior left side of the case features two flat, full-height pockets (again, one on top of the other and both stacked over the largest pocket noted above). Attached on top of these pockets are eight slots for business or credit cards and one flat pocket with a transparent plastic window for an identification card. There also is a pen holder attached to the spine of the case. The article is imported without contents.

Issue:

Whether the travel document holder should be classified under subheading 4202.92.4500, HTSUSA, as a travel or similar bag?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System, Explanatory Notes (EN), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See

T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, provides:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Additionally, the EN to heading 4202, HTSUSA, state that the heading only covers the specifically named containers and similar containers. Applying the principle of statutory construction known as *ejusdem generis*, which means "of the same kind," Customs finds that the instant travel document holder is covered by the term "similar containers" contained in the heading.

Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). The Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are . . . to organize, store, protect and carry various items[,] was affirmed by the Court of Appeals for the Federal Circuit. *Totes, Inc. v. United States*, 69 F.3d 495, 498 (1995). Applying the rationale set forth in *Totes*, Customs finds that the instant travel document holder serves the purposes of organizing, storing, protecting and carrying the various documents that are typically carried during travel. Accordingly, the document holder is classifiable under heading 4202, HTSUSA, as a "similar container."

With respect to classification at the subheading level, the article was originally classified under subheading 4202.92.4500, HTSUSA, as a travel or similar bag. The instant document holder has some of the same characteristics as a travel bag, e.g., organizing, storing, protecting, and carrying a person's documents while traveling. However, application of Additional U.S. Note 1 to Chapter 42, HTSUSA, removes the document holder from the subheading for travel and similar bags. The additional U.S. notes become applicable at the eight-digit level or U.S. subdivision of the international subheadings. The provision for travel and similar bags is defined by Additional U.S. Note 1, Chapter 42, HTSUSA, as follows:

For the purposes of heading 4202, the expression "travel, sports and similar bags" means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

The Additional U.S. Note clarifies what characteristics will be considered to determine if a bag is a travel or similar bag. Significantly it lists travel and similar bags as bags that are designed for carrying clothing and personal effects. In order to hold and carry clothing and personal effects, a bag must have a generic or general carrying capacity. The exemplars, backpacks and shopping bags, in the Additional U.S. Note, both have a general or generic carrying capacity suitable for holding clothing and personal effects. Because the document holder does not have

a generic carrying capacity, it does not meet the definition of travel and similar bags in Additional U.S. Note 1, Chapter 42, HTSUSA.

In HQ 954298, dated October 27, 1993, Customs considered three pouches. The first pouch was described as a travel pouch and measured 6" by 9", had one main compartment with two pockets on the front, and attached to a person's belt. The second pouch also attached to a person's belt, but it was shaped to hold and carry a hand weapon or pistol. The third pouch was designed to hold and carry an ammunition clip and it too attached to a person's belt.

The travel pouch was deemed to be classifiable as a travel, sports and similar bag because of its ability to carry personal items. However, the weapon and clip pouches were excluded from classification as travel, sports and similar bags because they were similar to those bags excluded by U.S. Additional Note 1 to Chapter 42.

HQ 954298 provides guidance as to the proper classification of the document holder that is the subject of this ruling. The pouch that had the generic or general carrying capacity was the only pouch that was classified as a travel, sports and similar bag. The two other pouches, which were somewhat specially fitted and had no generic carrying capacity, were excluded from the provision for travel, sports and similar bags. The document holder, due to (1) its lack of general or generic carrying capacity and (2) the fact that it is partially fitted, is more similar to the weapon and clip pouch, than it is to the travel pouch. *See also* HQ 954288, dated October 27, 1993.

Similarly, the document holder has characteristics and functions that are similar to other fitted or compartmentalized cases such as trucker's wallets, camera tripod cases, palmtop pocket cases, and compact disk (CD) carrying cases.¹ Like the document holder, these cases are somewhat fitted to carry, protect, and organize a general class of goods. They, like the document holder, do not have a generic or general carrying capacity. *See*, HQ 084931, dated August 14, 1989, (trucker's wallet classified in 4202.99.0000, HTSUSA, as "Other"); HQ 087113, dated July 26, 1990, (carrying case for scope, tripod and photo adapter eyepiece classified in 4202.92.9000, HTSUSA, as "Other"); HQ 962341, dated November 23, 1998, ("Palmtop Pocket Case" classified in 4202.92.9026, HTSUSA, as "Other"). HQ 960527, dated April 11, 2000, (CD-ROM storage folios classified in 4202.92.9026, HTSUSA, as "Other"); HQ 960983, dated September 25, 1998, (diskette storage case classified in 4202.99.9000, HTSUSA, as "Other"); HQ 953175, dated February 17, 1993, (compact disc holder classified in 4202.92.9020, HTSUSA, as "Other").

There are several other potential subheadings under which the document holder could possibly be classified. The document holder serves to organize and protect flat items, and has many of the same characteristics as the attache cases and briefcases that are covered in subheadings 4202.11, HTSUSA, through 4202.19, HTSUSA. However, the document holder is not designed to store protect, and carry items such as newspapers, small umbrellas, and/or other objects normally carried in an attache case or briefcase. *See*, HQ 962757, dated June 21, 2000; and HQ 962030, dated May 13, 1999.

Additionally, the document holder is not classifiable as "articles of a kind normally carried in the pocket or in the handbag," subheadings 4202.31, HTSUSA, through 4202.39, HTSUSA. Its large size, approximately 10-1/4 inches in height by 5-1/4 inches in width by 1 inch in depth (in the closed position), renders it too large to fit into a pocket or handbag. The wrist strap also indicates that the case is to be carried in the hand as opposed to in a purse or pocket.

Holding:

Accordingly, for the reasons stated above, Customs finds that the document holder is classified under subheading 4202.92.9060, HTSUSA, as "Trunks, suitcases, vanity cases, . . . Other: With outer surface of sheeting of plastic or of textile

¹ In 1997, the HTSUSA was modified by adding 4202.92.9050, HTSUS, "Cases designed to protect and transport compact disks (CD's), CD ROM disks, CD players, cassette players and/or cassettes."

materials: Other: Other: Other: Other." The duty, at the general one column rate, is 18.3 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT K]

CLA-2:RR:CR:TE 964788 JFS
Category: Classification
Tariff No. 4202.92.9060

MS. MARIA GALLEG0-TAVERAS
PATRICK POWERS CUSTOM BROKERS, INC.
27 Blake Ave.
Lynbrook, N.Y. 11563

Re: Revocation of: NY A86873, dated September 13, 1996; PD A81013, dated March 26, 1996; PD A81014, dated March 26, 1996; PD A81015, dated March 26, 1996; and PD A81016, dated March 26, 1996. Classification of Travel Document Holders; Heading 4202, HTSUSA.

DEAR MS. GALLEG0-TAVERAS:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) A86873, dated September 13, 1996, Port Decision (PD) A81013, dated March 26, 1996; PD A81014, dated March 26, 1996; PD A81015, dated March 26, 1996; and PD A81016 dated March 26, 1996. These ruling were issued to you on behalf of your client Fashioncraft-Excello, concerning the classification of document holders under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of these rulings, it has been determined that the classification of the document holders in 4202.32, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY A86873, PD A81013, PD A81014, PD A81015, and PD A81016.

Facts:

In NY A86873, style #4451 was under consideration. The document holder was an unlined polyvinyl chloride (PVC) document case designed to hold tickets and a passport during travel. We assume the document holder was approximately 9 1/2 inches by 4 1/2 inches in the closed position.

In PD A81013, style #6650 was under consideration. The document holder was a ticket/passport case for use during travel. It was approximately 9 inches by 4 1/4 inches closed, had an outer surface of PVC, and was unlined.

In PD A81014, style #3360 was under consideration. The document holder was a ticket/passport case for use during travel. It was approximately 10 inches by 5 inches closed, had an outer surface of textile backed PVC, and was unlined.

In PD A81015, style #4451 was under consideration. The document holder was a ticket/passport case for use during travel. We assume it was approximately 9 1/2 inches by 4 1/2 inches closed. The outer surface was composed of PVC, and the case

was unlined.

In PD A81016, style #3325 was under consideration. The document holder was described as a document case for use during travel. It was approximately 11 inches by 5 inches closed, had an outer surface of textile backed PVC, and was unlined.

Issue:

Whether the travel document holders should be classified under subheading 4202.32, HTSUSA, which provides for articles of a kind normally carried in the pocket or in the handbag?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, provides:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Additionally, the EN to heading 4202, HTSUSA, state that the heading only covers the specifically named containers and similar containers. Applying the principle of statutory construction known as *ejusdem generis*, which means "of the same kind," Customs finds that the instant travel document holder is covered by the term "similar containers" contained in the heading.

Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). The Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are . . . to organize, store, protect and carry various items[,] was affirmed by the Court of Appeals for the Federal Circuit. *Totes, Inc. v. United States*, 69 F.3d 495, 498 (1995). Applying the rationale set forth in *Totes*, Customs finds that the instant travel document holders serve the purposes of organizing, storing, protecting and carrying the various documents that are typically carried during travel. Accordingly, the document holders are classifiable under heading 4202, HTSUSA, as a "similar container."

With respect to classification at the subheading level, the articles were originally classified under subheading 4202.32, HTSUSA, covering articles of a kind normally carried in the pocket or in the handbag. The EN to subheading 4202.32, HTSUSA, state that the subheading covers "articles of a kind normally carried in the pocket or in the handbag and include spectacle cases, note-cases (bill-folds), wallets, purses, keycases, cigarette-cases, cigar-cases, pipe-cases and tobacco-pouches." Document holders are not provided for in the EN.

On June 21, 1995, this office published a General Notice in the CUSTOMS BULLETIN, Volume 29, Number 25, concerning goods identified as "Wallets on a String." The attributes of articles of a kind normally carried in the pocket or in the handbag were discussed. The notice stated in pertinent part:

Such articles include wallets, which may be described as flat cases or containers fitted to hold credit/identification cards, paper currency, coins and in some instances a checkbook holder. Articles meeting this description which also possess a detachable carrying strap have been classified as flatgoods.

In order to be classified as a flatgood, the article must fit comfortably in a handbag or pocket. For example, rectangular or square cases measuring approximately 7 1/2 inches by 4 1/2 inches, or 4 3/4 inches by 4 1/2 inches, in their closed position, have been classified as flatgoods.

While having similar features as the flatgoods described in the notice, the document holders under consideration are large enough that they cannot be comfortably carried in the pocket or in the handbag. Even the smallest document holder that is approximately 9 inches by 4 inches by 1 inch in the closed position, is too large to qualify as a flatgood. Accordingly the document holders do not qualify as flat goods carried in the pocket or in the handbag.

Another potential subheading in which to classify the document holders is 4202.92.4500, HTSUSA, which provides for "travel, sports and similar" bags. The instant document holders have some of the same characteristics as a travel bag, e.g., organizing, storing, protecting, and carrying a person's documents while traveling. However, application of Additional U.S. Note 1 to Chapter 42, HTSUSA, removes the document holders from the subheading for travel and similar bags. The additional U.S. notes become applicable at the eight-digit level or U.S. subdivision of the international subheadings. Travel, sports and similar bags are defined as:

For the purposes of heading 4202, the expression "*travel, sports and similar bags*" means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

Additional U.S. Note 1, Chapter 42, HTSUSA.

The exemplars, backpacks and shopping bags, both have a general or generic carrying capacity suitable for holding clothing and personal effects. Because the document holders do not have a generic carrying capacity, they do not meet the definition of travel and similar bags as provided in Additional U.S. Note 1, Chapter 42, HTSUSA.

The lack of ability to carry three dimensional items also prevents the document holders from being classified as briefcases or attache cases covered in subheadings 4202.11, HTSUSA, through 4202.19, HTSUSA. Although the document holders organize and protect flat items, and have many of the same characteristics as attache cases and briefcases, they are not designed to carry items such as newspapers, small umbrellas, and/or other objects normally carried in an attache case or briefcase. See, HQ 962757, dated June 21, 2000; and HQ 962030, dated May 13, 1999.

The document holders have characteristics and functions that are similar to other fitted or compartmentalized cases that have been classified in the "other" provision of subheading 4202, HTSUSA. These cases include trucker's wallets,

camera tripod cases, palmtop pocket cases, and compact disk (CD) carrying cases.¹ Like the document holders, these cases (1) are not designed to fit in the pocket or handbag, (2) are somewhat fitted to carry, protect, and organize a general class of goods, and (3) have no generic or general carrying capacity. See, HQ 084931, dated August 14, 1989, (trucker's wallet classified in 4202.99.0000, HTSUSA, as "Other"); HQ 087113, dated July 26, 1990, (carrying case for scope, tripod and photo adapter eyepiece classified in 4202.92.9000, HTSUSA, as "Other"); HQ 962341, dated November 23, 1998, ("Palmtop Pocket Case" classified in 4202.92.9026, HTSUSA, as "Other"). HQ 960527, dated April 11, 2000, (CD-ROM storage folios classified in 4202.92.9026, HTSUSA, as "Other"); HQ 960983, dated September 25, 1998, (diskette storage case classified in 4202.99.9000, HTSUSA; as "Other"); HQ 953175, dated February 17, 1993, (compact disc holder classified in 4202.92.9020, HTSUSA, as "Other").

Holding:

Accordingly, for the reasons stated above, Customs finds that the document holders are classified under subheading 4202.92.9060, HTSUSA, as "Trunks, suitcases, vanity cases, . . . Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: Other." The duty, at the general one column rate, is 18.3 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT L]

CLA-2:RR:CR:TE 964789 JFS
Category: Classification
Tariff No. 4202.92.9060

Ms. MARIA GALLEG0-TAVERAS
PATRICK POWERS CUSTOM BROKERS, INC.
27 Blake Ave.
Lynbrook, N.Y. 11563

Re: Revocation of PD A88536; Classification of Travel Document Holder; Heading 4202, HTSUSA.

DEAR Ms. GALLEG0-TAVERAS:

This letter is to inform you that Customs has reconsidered Port Decision (PD) A88536, dated October 24, 1996, issued to you on behalf of your client Customcraft, Inc., concerning the classification of a document holder under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of the ruling, it has been determined that the classification of the document holder in 4202.32, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes PD A88536.

¹ In 1997, the HTSUSA was modified by adding 4202.92.9050, HTSUS, "Cases designed to protect and transport compact disks (CD's), CD ROM disks, CD players, cassette players ad/or cassettes."

Facts:

The article under consideration is style #4451. The article is a ticket/passport case for use during travel. It is approximately 9 1/2 inches by 4 1/2 inches closed, and has an outer surface of polyvinyl chloride (PVC) sheeting with a textile backing.

Issue:

Whether the travel document holder should be classified under subheading 4202.32, HTSUSA, which provides for articles of a kind normally carried in the pocket or in the handbag?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, provides:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Additionally, the EN to heading 4202, HTSUSA, state that the heading only covers the specifically named containers and similar containers. Applying the principle of statutory construction known as *ejusdem generis*, which means "of the same kind," Customs finds that the instant travel document holder is covered by the term "similar containers" contained in the heading.

Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). The Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are . . . to organize, store, protect and carry various items[.]" was affirmed by the Court of Appeals for the Federal Circuit. *Totes, Inc. v. United States*, 69 F.3d 495, 498 (1995). Applying the rationale set forth in *Totes*, Customs finds that the instant travel document holder serves the purposes of organizing, storing, protecting and carrying the various documents that are typically carried during travel. Accordingly, the document

holder is classifiable under heading 4202, HTSUSA, as a "similar container."

With respect to classification at the subheading level, the article was originally classified under subheading 4202.32, HTSUSA, covering articles of a kind normally carried in the pocket or in the handbag. The EN to subheading 4202.32, HTSUSA, state that the subheading covers "articles of a kind normally carried in the pocket or in the handbag and include spectacle cases, note-cases (bill-folds), wallets, purses, keycases, cigarette-cases, cigar-cases, pipe-cases and tobacco-pouches." Document holders are not provided for in the EN.

On June 21, 1995, this office published a General Notice in the Customs Bulletin, Volume 29, Number 25, concerning goods identified as "Wallets on a String." The attributes of articles of a kind normally carried in the pocket or in the handbag were discussed. The notice stated in pertinent part:

Such articles include wallets, which may be described as flat cases or containers fitted to hold credit/identification cards, paper currency, coins and in some instances a checkbook holder. Articles meeting this description which also possess a detachable carrying strap have been classified as flatgoods.

In order to be classified as a flatgood, the article must fit comfortably in a handbag or pocket. For example, rectangular or square cases measuring approximately 7 1/2 inches by 4 1/2 inches, or 4 3/4 inches by 4 1/2 inches, in their closed position, have been classified as flatgoods.

While having similar features as the flatgoods described in the notice, the document holder under consideration is too large to qualify as a flatgood and cannot comfortably be carried in the pocket or in the handbag. Accordingly the document holder does not qualify as a flat good carried in the pocket or in the handbag.

Another potential subheading in which to classify the document holder is 4202.92.4500, HTSUSA, which provides for "travel, sports and similar" bags. The instant document holder has some of the same characteristics as a travel bag, e.g., organizing, storing, protecting, and carrying a person's documents while traveling. However, application of Additional U.S. Note 1 to Chapter 42, HTSUSA, removes the document holder from the subheading for travel and similar bags. The additional U.S. notes become applicable at the eight-digit level or U.S. subdivision of the international subheadings. Travel, sports and similar bags are defined as:

For the purposes of heading 4202, the expression "*travel, sports and similar bags*" means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases bottle cases and similar containers.

Additional U.S. Note 1, Chapter 42, HTSUSA.

The exemplars, backpacks and shopping bags, in the Additional U.S. Note, both have a general or generic carrying capacity suitable for holding clothing and personal effects. Because the document holder does not have a generic carrying capacity, it does not meet the definition of travel, sports and similar bags as provided in Additional U.S. Note 1, Chapter 42, HTSUSA.

The lack of ability to carry three dimensional items also prevents the document holder from being classified as a briefcase or attache case covered in subheadings 4202.11, HTSUSA, through 4202.19, HTSUSA. Although the document holder organizes and protects flat items, and has many of the same characteristics as attache cases and briefcases, it is not designed to carry items such as newspapers, small umbrellas, and/or other objects normally carried in an attache case or briefcase. See, HQ 962757, dated June 21, 2000; and HQ 962030, dated May 13, 1999.

The document holder has characteristics and functions that are similar to other

fitted or compartmentalized cases that have been classified in the "other" provision of subheading 4202, HTSUSA. These cases include trucker's wallets, camera tripod cases, palmtop pocket cases, and compact disk (CD) carrying cases.¹ Like the instant document holder, these cases (1) are not designed to fit in the pocket or handbag, (2) are somewhat fitted to carry, protect, and organize a general class of goods, and (3) have no generic or general carrying capacity. See, HQ 084931, dated August 14, 1989, (trucker's wallet classified in 4202.99.0000, HTSUSA, as "Other"); HQ 087113, dated July 26, 1990, (carrying case for scope, tripod and photo adapter eyepiece classified in 4202.92.9000, HTSUSA, as "Other"); HQ 962341, dated November 23, 1998, ("Palmtop Pocket Case" classified in 4202.92.9026, HTSUSA, as "Other"). HQ 960527, dated April 11, 2000, (CD-ROM storage folios classified in 4202.92.9026, HTSUSA, as "Other"); HQ 960983, dated September 25, 1998, (diskette storage case classified in 4202.99.9000, HTSUSA, as "Other"); HQ 953175, dated February 17, 1993, (compact disc holder classified in 4202.92.9020, HTSUSA, as "Other").

Holding:

Accordingly, for the reasons stated above, Customs finds that the document holder is classified under subheading 4202.92.9060, HTSUSA, as "Trunks, suitcases, vanity cases, . . . Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: Other." The duty, at the general one column rate, is 18.3 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT M]

CLA-2:RR:CR:TE 964790 JFS
Category: Classification
Tariff No. 4202.92.9060

MS. MARIA GALLEGO-TAVERAS
PATRICK POWERS CUSTOM BROKERS, INC.
27 Blake Ave.
Lynbrook, N.Y. 11563

Re: Revocation of PD B84557, dated May 19, 1997, and PD B84558, dated May 19, 1997; Classification of Travel Document Holders; Heading 4202, HTSUSA.

DEAR MS. GALLEGO-TAVERAS:

This letter is to inform you that Customs has reconsidered Port Decision (PD) B84557, dated May 19, 1997, and PD B84558, dated May 19, 1997, issued to you on behalf of your client Customcraft, Industries, Inc., concerning the classification of document holders under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of the rulings, it has been determined that

¹ In 1997, the HTSUSA was modified by adding 4202.92.9050, HTSUS, "Cases designed to protect and transport compact disks (CD's), CD ROM disks, CD players, cassette players ad/or cassettes."

the classification of the document holders in 4202.92.4500, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes PD B84557, and PD B84558.

Facts:

In PD B84557, style #3375 was under consideration. The document holder was a ticket/passport case for use during travel. It was approximately 10 inches high, 5 ½ inches wide, 1 inch deep (when closed), and had an outer surface of textile backed PVC fabric. The article had an open top pocket on one exterior face and an open top pocket of clear plastic sheeting material on each of the two interior faces. The article had a zippered closure extending around three edges of the case with a wrist strap made of the same material as the body of the case attached to the zipper pull.

In PD B84558, style #3415 was under consideration. The document holder was a ticket/passport case for use during travel. It was approximately 10 inches high, 5 ¼ inches wide, and 1 inch deep (when closed), and had an outer surface of textile backed PVC fabric. The article had an open top pocket on one exterior face, and an open top pocket of clear plastic sheeting material on each of the two interior faces. The case had a zippered closure extending around three edges of the case with a wrist strap made of textile webbing attached to the zipper pull.

Issue:

Whether the travel document holders should be classified under subheading 4202.92.4500, HTSUSA, as a travel or similar bag?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, provides:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Additionally, the EN to heading 4202, HTSUSA, state that the heading only covers the specifically named containers and similar containers. Applying the principle of statutory construction known as *eiusdem generis*, which means "of the same kind," Customs finds that the instant travel document holders are covered by the term "similar containers" contained in the heading.

Under the rule of *eiusdem generis*, where an enumeration of specific things is

followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). The Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are . . . to organize, store, protect and carry various items[,] was affirmed by the Court of Appeals for the Federal Circuit. *Totes, Inc. v. United States*, 69 F.3d 495, 498 (1995). Applying the rationale set forth in *Totes*, Customs finds that the instant travel document holders serve the purposes of organizing, storing, protecting and carrying the various documents that are typically carried during travel. Accordingly, the document holders are classifiable under heading 4202, HTSUSA, as a "similar container."

With respect to classification at the subheading level, the articles were originally classified under subheading 4202.92.4500, HTSUSA, as a travel or similar bag. The instant document holders have some of the same characteristics as a travel bag, e.g., organizing, storing, protecting, and carrying a person's documents while traveling. However, application of Additional U.S. Note 1 to Chapter 42, HTSUSA, removes the document holders from the subheading for travel and similar bags. The additional U.S. notes become applicable at the eight-digit level or U.S. subdivision of the international subheadings. The provision for travel and similar bags is defined in Additional U.S. Note 1, Chapter 42, HTSUSA, as follows:

For the purposes of heading 4202, the expression "travel, sports and similar bags" means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

The Additional U.S. Note clarifies what characteristics will be considered to determine if a bag is a travel or similar bag. Significantly, it lists travel and similar bags as bags that are designed for carrying clothing and personal effects. In order to hold and carry clothing and personal effects, a bag must have a generic or general carrying capacity. The exemplars, backpacks and shopping bags, both have a general or generic carrying capacity suitable for holding clothing and personal effects. Because the document holders do not have a generic carrying capacity, they do not meet the definition of travel and similar bags in Additional U.S. Note 1, Chapter 42, HTSUSA.

In HQ 954298, dated October 27, 1993, Customs considered three pouches. The first pouch was described as a travel pouch and measured 6" by 9", had one main compartment with two pockets on the front, and attached to a person's belt. The second pouch also attached to a person's belt, but it was shaped to hold and carry a hand weapon or pistol. The third pouch was designed to hold and carry an ammunition clip and it too attached to a person's belt.

The travel pouch was deemed to be classifiable as a travel, sports and similar bag because of its ability to carry personal items. However, the weapon and clip pouches were excluded from classification as travel, sports and similar bags because they were similar to those bags excluded by U.S. Additional Note 1 to Chapter 42.

HQ 954298 provides guidance as to the proper classification of the document holders that are the subject of this ruling. The pouch that had the generic or general carrying capacity was the only pouch that was classified as a travel, sports and similar bag. The two other pouches, which were somewhat specially fitted and had no generic carrying capacity, were excluded from the provision for travel, sports and similar bags. The document holders, due to (1) their lack of general or generic carrying capacity and (2) the fact that they are partially fitted, are more similar to the weapon and clip pouch, than they are to the travel pouch. See also

HQ 954288, dated October 27, 1993.

Similarly, the document holders have characteristics and functions that are similar to other fitted or compartmentalized cases such as trucker's wallets, camera tripod cases, palmtop pocket cases, and compact disk (CD) carrying cases.¹ Like the document holders, these cases are somewhat fitted to carry, protect, and organize a general class of goods. They, like the document holders, do not have a generic or general carrying capacity. See, HQ 084931, dated August 14, 1989, (trucker's wallet classified in 4202.99.0000, HTSUSA, as "Other"); HQ 087113, dated July 26, 1990, (carrying case for scope, tripod and photo adapter eyepiece classified in 4202.92.9000, HTSUSA, as "Other"); HQ 962341, dated November 23, 1998, ("Palmtop Pocket Case" classified in 4202.92.9026, HTSUSA, as "Other"). HQ 960527, dated April 11, 2000, (CD-ROM storage folios classified in 4202.92.9026, HTSUSA, as "Other"); HQ 960983, dated September 25, 1998, (diskette storage case classified in 4202.99.9000, HTSUSA, as "Other"); HQ 953175, dated February 17, 1993, (compact disc holder classified in 4202.92.9020, HTSUSA, as "Other").

There are several other potential subheadings under which the document holders could possibly be classified. The document holders serve to organize and protect flat items, and has many of the same characteristics as the attache cases and briefcases that are covered in subheadings 4202.11, HTSUSA, through 4202.19, HTSUSA. However, the document holders are not designed to store protect, and carry items such as newspapers, small umbrellas, and/or other objects normally carried in an attache case or briefcase. See, HQ 962757, dated June 21, 2000; and HQ 962030, dated May 13, 1999.

Additionally, the document holders are not classifiable as "articles of a kind normally carried in the pocket or in the handbag," subheadings 4202.31, HTSUSA, through 4202.39, HTSUSA. Their large size renders them too large to fit into a pocket or handbag. The wrist strap also indicates that the cases are to be carried in the hand as opposed to in a handbag or pocket.

Holding:

Accordingly, for the reasons stated above, Customs finds that the document holders are classified under subheading 4202.92.9060, HTSUSA, as "Trunks, suitcases, vanity cases, . . . Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: Other: Other." The duty, at the general one column rate, is 18.3 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

¹ In 1997, the HTSUSA was modified by adding 4202.92.9050, HTSUS, "Cases designed to protect and transport compact disks (CD's), CD ROM disks, CD players, cassette players and/or cassettes."

PROPOSED REVOCATION OF CUSTOMS RULING LETTER &
TREATMENT RELATING TO TARIFF CLASSIFICATION OF A
CHILD'S LIPSTICK CASE

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of a child's Winnie the Pooh lipstick case.

SUMMARY: Pursuant to Section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of a child's lipstick case with an outer surface of plastic material. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before March 30, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Ruling Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textile Branch, (202) 927-1368.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify a ruling pertaining to the classification of a child's lipstick case from China. Although in this notice Customs is specifically referring to one ruling, New York (NY) E85727, this notice covers any rulings on this merchandise, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice, memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In NY E85727, dated August 17, 1999, concerning the tariff classification of a child's Winnie the Pooh lipstick case with an outer surface of polyvinyl chloride material, the product was erroneously classified under subheading 4202.92.4500 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) as a travel, sports or similar bag with an outer surface of sheeting of plastic. The item under review is not a travel or sports bag but is the type of merchandise which is typically carried by women or girls in their handbags or pockets to hold lipsticks, and therefore classification is subheading 4202.92.4500, HTSUSA is inappropriate. NY E85727 is set forth as "Attachment A" to this document. The correct classification for the product should be under subheading 4202.32.1000 of the HTSUSA as an item normally carried in a wallet or handbag with an outer surface of sheeting of plastic.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY E85727, and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Proposed Headquarter Ruling (HQ) 963429 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to

substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Date: February 8, 2001.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

August 17, 1999
CLA-2-42: RR:NC: 341:E85727
Category: Classification
Tariff No. 4202.32.1000; 4202.92.4500

MS. BARBARA Y. WIERBICKI
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036

Re: The tariff classification of a make-up case and wallet from China.

DEAR MS. WIERBICKI:

In your letter dated August 12th, 1999, you requested a tariff classification ruling for a make-up case and wallet.

The samples submitted are identified collectively as Product Profile (PP) 192834, which consists of a wallet and a make-up case. Each is manufactured of a cellular Polyvinyl Chloride (PVC) plastic sheeting exterior and a fabric backing.

The wallet has an overall measurement of 4 1/2" x 4" x 1". It is bi-fold with a snap flap closure. The interior is fitted with three open slots for paper currency, credit cards, or other small flat paper articles and one open pocket. The exterior has a clear plastic window for an ID card and one open slot for paper currency or other flat goods.

The make-up case measures approximately 4" x 3" x 1 1/4". It is bi-fold and has a snap closure on the flap and a plastic mirror sewn into the interior of the flap. The case is said to be a "lipstick case". However, it is not specially shaped or fitted to contain a tube of lipstick. It is a generic make-up case with a mirror.

The wallet and make-up case will not be presented packed for retail sale as a set. The applicable subheading for the wallet will be 4202.32.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of a kind normally carried in the pocket or handbag...with outer surface of sheeting of plastic, of reinforced or laminated plastics. The rate of duty will be 12/1 cents/kg + 4.6%.

The applicable subheading for the make-up case will be 4202.92.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports, and similar bags, other. The rate of duty will be 20% *ad valorem*.

Your samples are being returned as requested.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin German at 212-637-7091.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

CLA-2 RR:CR:TE 963429 mbg
Category: Classification
Tariff No. 4202.32.1000

BARBARA Y. WIERBICKI, ESQ.
THOMPSON & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036-8901

Re: Request for reconsideration of NY E85727; Classification of a "lipstick case" from China.

DEAR MS. WIERBICKI:

This is in reply to your letter, on behalf of your client Avon Products, Inc., dated September 15, 1999, wherein you request reconsideration of New York Ruling Letter ("NY") E85727, dated August 17, 1999. In NY E85727, a child's lipstick case was classified in subheading 4202.92.4500 under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). Upon review by the Office of Regulations & Rulings, NY E85727 is hereby modified for the reasons set forth below and the subject merchandise is classified in subheading 4202.32.1000, HTSUSA.

Facts:

The subject merchandise is identified as a child's Winnie the Pooh lipstick case. In NY E85727 the lipstick case and a wallet were classified, but reconsideration only concerns the lipstick case.

The lipstick case has an exterior surface of textile reinforced polyvinyl chloride and measures approximately 3 inches wide by 4 inches tall by 1 inch deep. The merchandise consists of a single rectangular compartment with full flap closure and holds three conventional sized lipsticks. The inside flap incorporates a plastic mirror, measuring approximately 3 inches by 4 inches in a cutout representing a silhouette of Winnie the Pooh's head. The flap is secured with a snap closure.

Issue:

What is the proper classification for the subject merchandise under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRI's"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require,

the remaining GRI may then be applied. The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Heading 4202, HTSUSA, provides for "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper."

Thus, this heading encompasses the articles enumerated, as well as containers similar to these articles.

The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the EN when interpreting the HTSUSA.

The EN to heading 4202 suggest that the expression "similar containers" in the first part of the heading "includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc." With regard to the second part of heading 4202, the EN indicate that the expression "similar containers" indicates articles which must be wholly or mainly composed of the materials specified therein and includes "note-cases, writing-cases, pen-cases, ticket-cases, needle-cases, key-cases, cigar-cases, pipe-cases, tool and jewelry rolls, shoe-cases, brush-cases, etc." There is no requirement that the articles be specially shaped or fitted.

Heading 4202 indicates coverage is for only the articles specifically named and similar containers. Inasmuch as "lipstick cases" are not *eo nomine* provided for in heading 4202, HTSUSA, we must consider whether or not the goods are classifiable as "similar containers" under 4202, HTSUSA. Applying the principle of statutory construction known as *ejusdem generis*, which means "of the same kind," Customs finds that the subject merchandise is covered by the term "similar containers."

Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). In *Totes*, the Court of Appeals for the Federal Circuit ("CAFC") affirmed the Court of International Trade's ("CIT") determination that the "essential characteristics and purpose of Heading 4202 exemplars are. . . to organize, store, protect and carry various items." *Id.*

The CIT recently considered a classification issue similar to the subject merchandise involving heading 4202, HTSUS, in the case of *Len-Ron Manufacturing Co., Inc. v. United States*. In *Len-Ron*, the court considered the classification of small bags which were used by women to hold cosmetics and various personal items. The court determined that those bags were properly classified as vanity cases of subheading 4202.12, HTSUS, rather than as travel bags of subheading 4202.92, HTSUS, or as articles normally carried in a pocket or handbag in subheading 4202.32, HTSUS. The court defined a "vanity case" broadly to be "a small handbag or case used to hold cosmetics." *Len-Ron Manufacturing Co., Inc. v. United States*, 118 F.Supp 2d 1266 (2000). However, the CIT also discussed sub-

heading 4202.32, HTSUS, and stated, "The class or kind defined by the subheading appears to be items which have independent and various functions, albeit normally carried in the pocket or in the handbag." *Id.* "Subheading 4202.32, HTSUS, is a broad provision encompassing a variety of articles with specific and independent uses as illustrated by the Explanatory Notes." *Id.* The instant merchandise is not a generic vanity case for cosmetics like the merchandise under consideration in *Len-Ron*. The lipstick case is designed specifically to hold three tubes of lipstick which are then carried in a women's pocket or most likely in a handbag. The CIT further stated, "subheading 4202.32, HTSUS, addresses the manner in which articles are employed or transported." *Id.*

Accordingly, the subject merchandise, which is substantially constructed and is designed to carry and protect a woman's lipsticks is classifiable within subheading 4202.32, HTSUS, as similar to a wallet or spectacle case whose function is to organize, store, or protect personal items. Furthermore, due to the size, purpose and function of the lipstick case, women tend to carry such an item either on their person or in their handbags and classification within subheading 4202.32, HTSUS, as an article of a kind normally carried in a pocket or handbag is appropriate. This classification is consistent with Customs rulings which have consistently placed lipstick cases in subheading 4202.32. See e.g., NY 818813, dated Feb. 20, 1996; PD A85182, dated July 10, 1996; PD C82693, dated Jan. 5, 1998; PD C86634, dated May 5, 1998; NY D81178, dated Aug. 19, 1998; NY D86874, dated Feb. 9, 1999; and PD D86452, dated Jan. 26, 1999.

Holding:

NY E85727 is hereby modified.

The lipstick case is properly classified in subheading 4202.32.1000, HTSUSA as "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Articles of a kind normally carried in the pocket or in the handbag: With outer surface of sheeting of plastic or of textile materials: With outer surface of sheeting of plastic: Of reinforced or laminated plastics." The lipstick case is dutiable at general column one duty rate of 12.1 cents per kg plus a rate of duty of 4.6 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification), you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,

Director,

Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF A DECORATIVE
GLASS GARDEN ORNAMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of a decorative glass garden ornament.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of a decorative glass garden ornament, under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before March 30, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to: U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the im-

porter of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NY) D81179, dated August 18, 1998, which pertains to the classification of a decorative glass garden ornament. NY D81179 is set forth as "Attachment A" to this document.

Although in this notice Customs is specifically referring to one ruling, NY D81179, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced rulings (see above), should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY D81179 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 964629 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 12, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

August 18, 1998
CLA-2-70:RR:NC:2:226 D81179
Category: Classification
Tariff No. 7020.00.6000

Ms. LISA CHASTAIN
FRITZ COMPANIES, INC.
3930 W. 29th Street S Ste #5
Wichita, KS 67217

Re: The tariff classification of a glass article from Taiwan.

DEAR MS. CHASTAIN:

In your letter dated August 11, 1998, on behalf of your client, Decorator and Craft, you requested a tariff classification ruling. A representative sample and an advertisement of the item were submitted with your ruling request.

The subject article, which is identified as "gazing ball", is a ten inch hollow glass ball with an extending open neck. The item has a reflective (mirror-like) appearance and will be used as an outdoor lawn decoration. You indicated in your letter that this item can not stand on its own. You further stated that this product will be marketed in the United States with a twenty four to thirty six inch high pedestal base.

The applicable subheading for the glass "gazing ball" will be 7020.00.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of glass: other. The rate of duty will be 5.3 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Jacob Bunin at 212-466-5796.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

CLA-2 RR:CR:GC 964629 AML
Category: Classification
Tariff No. 7013.99.00

Ms. LISA CHASTAIN
FRITZ COMPANIES, INC.
3930 W. 29th Street S Ste #5
Wichita, KS 67217

Re: Decorative glass garden ornament; NYD81179 reconsidered.

DEAR MS. CHASTAIN:

This is in reference to New York Ruling Letter (NY) D81179, issued to you on behalf of Decorator and Craft on August 18, 1998, which classified a decorative glass garden ornament under subheading 7020.00.60 of the Harmonized Tariff

Schedule of the United States (HTSUS), which provides for other articles of glass: other. We have reconsidered NY D81179 and now believe that the classification set forth is incorrect. This letter sets forth the correct classification.

Facts:

The article was described in NY D81179 as follows:

The subject article, which is identified as "gazing ball", is a ten inch hollow glass ball with an extending open neck. The item has a reflective (mirror-like) appearance and will be used as an outdoor lawn decoration. You indicated in your letter that this item can not stand on its own. You further stated that this product will be marketed in the United States with a twenty four to thirty six inch high pedestal base.

NY D81179 classified the glass "gazing ball" under subheading 7020.00.60, HTSUS, which provides for other articles of glass: other.

Issue:

Whether the decorative glass garden ornaments are classifiable under subheading 7013.99.00, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other; or under subheading 7020.00.60, HTSUS, which provides for other articles of glass: other?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

- 7013 Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
 - Other glassware (con.):
- 7013.99 Other.
 - * * *
- 7020.00 Other articles of glass:
- 7020.00.60 Other.

There is no question that the articles are classifiable in Chapter 70, HTSUS, which provides for articles of glass (we note that in *Los Angeles Tile Jobbers, Inc. v. United States*, 63 Cust. Ct. 248, C.D. 3904 (1969), the Court stated that "all articles of glass are generally defined as 'glassware'." (63 Cust. Ct. at 250; citing Webster's Third New International Dictionary (1968); see also Webster's New World Dictionary, Third College Edition, at 573 (1988), defining "glassware" as "articles made of glass"). To be determined is which subheading within Chapter 70 best provides for the articles.

Subheading 7020.00.60, HTSUS, is a so-called "basket" provision within Chapter 70, in which classification "is appropriate only when there is no tariff category that covers the merchandise more specifically." (*Apex Universal, Inc., v. United States*, CIT Slip Op. 98-69 (May 21, 1988)). Therefore, we are first addressing the other competing provisions within Chapter 70. Only if classification in those provisions is precluded will we address classification in heading 7020, HTSUS.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commen-

tary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See, T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The "gazing balls," products of the blow mold process, have no functional use other than as a decoration for a lawn or garden. That is, the articles fulfill their function simply because they are *in esse*: by being. All of the articles bear a "neck" that we assume is a product of the blow molding process and which you allege facilitates the articles to "connect" to or be otherwise placed on a stand or stake. (We note that the neck could also be utilized to place or embed the articles in the ground or a garden.) Although one could prefer that the gazing ball be displayed from a stake or stand, it is reasonable to assume that one could place (arrange or embed) the article on the ground in a garden to achieve a similar, decorative effect.) Were the articles imported with a stand, the glass ornament would impart the essential character to the importation. See Headquarters Ruling Letters (HQs) 957367, dated March 5, 1995; 957413, dated March 31, 1995, and 953384, dated September 14, 1993, and rulings concerning similar articles cited therein.

Heading 7013, HTSUS, provides for "glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018) [emphasis added]." The Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, "of the same class or kind," teaches that "where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described." *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). The ENs to heading 7013, HTSUS, provide, in pertinent part, that:

This heading covers the following types of articles, most of which are obtained by pressing or blowing in moulds:

* * *

(4) Glassware for indoor decoration and other glassware (including that for churches and the like), such as vases, ornamental fruit bowls, statuettes, fancy articles (animals, flowers, foliage, fruit, etc.), table-centres (other than those of heading 70.09), aquaria, incense burners, etc., and souvenirs bearing views.

These articles may be *e.g.*, of ordinary glass, lead crystal, glass having a low coefficient of expansion (*e.g.*, borosilicate glass) or of glass ceramics (the latter two in particular, for kitchen glassware). They may also be colourless, coloured or of flashed glass, and may be cut, frosted, etched or engraved, or otherwise decorated, or of plated glass (for example, certain trays fitted with handles).

* * *

Articles of glass combined with other materials (base metal, wood, etc.), are classified in this heading only if the glass gives the whole the character of glass articles.

We believe in this instance that the "gazing balls," decorative glass articles for outdoor use as decorations, are sufficiently similar to the articles enumerated in heading 7013 (such as . . . statuettes, fancy articles (animals, flowers, foliage, fruit, etc.), to warrant classification as such under heading 7013, HTSUS. That is, we find that the decorative glass articles for outdoor use are *ejusdem generis* with the decorative glass articles for indoor use described in the heading and EN to heading 7013, HTSUS.

The gazing ball is distinguishable from the articles classified in HQs 957367, 957413 and 953384. In those rulings, bell shaped glassware (which after importation would be sold with a stand), a floor standing glass vase with a metal stand, and, among other things, yards of ale in various sizes (which also following importation would be sold with stands), respectively, were classified in heading 7020, HTSUS. The rationale behind these rulings is that that glass articles were either

parts of composite decorative, utilitarian goods or parts thereof, and because heading 7013 does not contain a parts provision, the articles fell to be classified in heading 7020. (See also *Riekes Crisa Corp v. United States*, 14 CIT 235, 245 (1990), in which the Court observed that "under well established principles of customs law, 'a tariff provision which does not specifically provide for parts does not include them.'" (citing *Glass Prods. v. United States*, 10 CIT 253, 255, 641 F. Supp. 813, 814 (1986).) The decorative glass ornaments for outdoor use, on the other hand, are capable, depending on the preference of the consumer, of being displayed upon importation.

An article is to be classified according to its condition as imported. See, *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). In their condition as imported, the decorative glass articles for display in gardens are substantially complete. That is, the articles do not require further working to fulfill their "function;" one needs only to decide how to display the articles, be it on a stake, stand or the ground.

GRI 2(a) provides, in pertinent part, that:

2(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article.

We find that, in their condition as imported, and in accordance with GRI 2(a), the articles have the essential character of decorative glass articles for outdoor use. Any stand (which is not imported contemporaneously) for the articles becomes ancillary; the stand facilitates the display of the articles.

The determination that decorative glass articles for outdoor use are classifiable under subheading 7013, HTSUS, comports with prior rulings of this office. In New York Ruling Letter (NY) 086166, dated April 9, 1990; in Headquarters Ruling Letters (HQ) 961004, dated May 5, 1999; and HQ 962066, dated September 22, 1998, "suncatchers" were classified under subheading 7013.99, HTSUS.

Holding:

At GRI 2(a), the decorative glass garden ornaments are classifiable in subheading 7013.99.00, HTSUS, which provides for other articles of glass, other. The classification of these articles at the eight-digit level will be determined by the value of the respective article.

Effect on other Rulings:

NY D81179 is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION AND MODIFICATION OF RULING
LETTERS AND TREATMENT RELATING TO TARIFF
CLASSIFICATION OF BILLIARD CUE CASES

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation and modification of tariff classification ruling letters and treatment relating to the classification of billiard cue cases.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke two rulings, and to modify one ruling, relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of billiard cue cases. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before March 30, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textiles Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch: (202) 927-2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke two rulings and modify one ruling relating to the tariff classification of billiard cue cases. Although in this notice Customs is specifically referring to the revocation of Port Decision (PD) C81490, dated December 1, 1997; the revocation of New York Ruling Letter (NY) E86010, dated September 1, 1999; and the modification of NY 865731, dated August 26, 1991, (attachments A, B, and C, respectively); this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Customs has consistently classified billiard cue cases in heading 4202, HTSUSA, which provides for, among other things, trunks, briefcases, traveling bags, handbags, wallets, purses, map cases, and sports bags. However, at the subheading level, Customs has classified billiard cue cases either as "other" containers or as sports bags.

Based on our analysis of the scope of the terms of the subheading to 4202, HTSUSA, the Legal Notes, and the Explanatory Notes, billiard cue cases of the type discussed herein, are classifiable in 4202.92, HTSUSA, as sports bags, with outer surface of sheeting of plastic or of textile materials.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke PD C81490, and NY E86010, and to modify NY 865731, and any other

ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 961835, HQ 964800, and HQ 964801 (attachments D, E, and F, respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 8, 2001.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

December 1, 1997

CLA-2-42:RI:130:G25:DJP

Category: Classification

Tariff No. 4202.92.9025; 4202.92.9060

MS. LAURA DENNY
CBT INTERNATIONAL, INC.
110 W. Ocean Blvd., Suite 728
Long Beach, CA 90802

Re: The tariff classification of cue stick cases from Taiwan/China.

DEAR MS. DENNY:

In your letter dated November 6, 1997, you requested a tariff classification ruling on behalf of Cue Stix International, Inc., Boulder, CO.

The samples submitted with your request, items K143 and K201, are fitted cases for billiard cue sticks. K143 is approximately 2'10" x 5" in size. This item features a zipper top closure, a web adjustable shoulder strap and an exterior pocket with velcro closure. The outer surface of K143 is a nylon textile material. K201 is approximately 28" x 4" in size. This style features a zipper top closure, a web adjustable shoulder strap and two exterior pockets with zipper closure. The outer surface of style K201 is vinyl. These cases are similar to cases listed in the first part of heading 4202, i.e., binocular, camera and gun cases.

The applicable subheading for K143 will be 4202.92.9025, Harmonized Tariff Schedule of the United States (HTS), which provides for containers similar to binocular cases, camera cases, etc., other, other, with outer surface of textile materials, other, of manmade fibers. The rate of duty will be 19.3 per cent *ad valorem*.

The applicable subheading for K201 will be 4202.92.9060, Harmonized Tariff Schedule of the United States (HTS), which provides for containers similar to binocular cases, camera cases, etc., other, other, with outer surface of sheeting of plastic, other, other. The rate of duty will be 19.3 per cent *ad valorem*. Item K143

falls within textile category designation 670. Based upon international textile trade agreements, products of Taiwan/China in category 670 are subject to visa and quota requirements.

Your samples are being returned as requested.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraints Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

RICHARD BARRETTE,
Service/Area Port Director,
Providence, RI.

[ATTACHMENT B]

September 1, 1999
CLA-2-42:RR:NC:TA:341 E86010
Category: Classification
Tariff No. 4202.92.9060

MS. PAMELA PINTER
BIG APPLE CUSTOMS BROKERS, INC.
151-02 132nd Avenue
Jamaica, NY 11434

Re: The tariff classification of a Pool Cue Case from Taiwan.

DEAR MS. PINTER:

In your letter dated August 17, 1999, on behalf of Regent Sports Corp., you requested a tariff classification ruling for a pool cue case.

The sample submitted, no style number indicated, is a specially fitted case for pool cue sticks. The exterior surface is manufactured of imitation nylon PVC plastic. The interior is padded to protect the cue sticks during storage/travel. The case features a zippered top closure, a web adjustable shoulder strap and an exterior accessory pocket with a hook and loop fastener. Your sample is being returned as requested.

The applicable subheading for the Pool Cue Case of plastic will be 4202.92.9060, Harmonized Tariff Schedule of the United States (HTS), which provides for trunks, suitcases..., binocular cases, camera cases and similar containers, with outer surface of sheeting of plastic, other, other, other, other. The rate of duty will be 18.8 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212-637-7091.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

August 26, 1991
CLA-2-42:S:N:N3G:341 865731
Category: Classification
Tariff No. 4202.92.3030; 4202.92.4500;
4202.92.9040

CUE & CASE
5585 University Blvd. W.
Jacksonville, Florida 32216

Re: The tariff classification of pool cue cases from Taiwan.

DEAR MR. LUCAS:

In your letter dated July 24, 1991, you requested a tariff classification ruling. You have submitted four samples with your request.

Style #s C-42 and C-51 are hard pool cue cases covered with a vinyl material.

Style #C-10 is a soft padded pool cue case covered with a vinyl material.

Style #P-2 is a soft padded pool cue case covered with nylon textile material.

Your samples are being returned as requested.

The applicable subheading for Style #s C-42 and C-51 will be 4202.92.9040, Harmonized Tariff Schedule of the United States (HTS), which provides trunks...musical instrument cases...and similar containers...other, other. The rate of duty will be 20% *ad valorem*.

The applicable subheading for Style #C-10 will be 4202.92.4500, HTS, which provides for travel, sports and similar bags...with outer surface of plastic sheeting...other. The rate of duty will be 20% *ad valorem*.

The applicable subheading for Style #P-2 will be 4202.92.3030, HTS, which provides for travel, sports and similar bags, with outer surface of textile materials, other, of man-made fibers, other. The rate of duty will be 20% *ad valorem*. Style #P-2, the nylon covered pool cue case, falls within textile category designation 670. Based upon international textile trade agreements, products of Taiwan are subject to visa requirements and quota restraints.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT D]

CLA-2 RR:CR:TE 961835 JFS
Category: Classification
Tariff No. 4202.92.3031

MR. DAN E. ALLEN
MIAMI VALLEY WORLDWIDE, INC.
1300 E. Third Street
Dayton, OH 45403

Re: Revocation of Port Decision C81490; Classification of Billiard Cue Carrying Cases; 4202, HTSUSA; Sports Travel and Similar Bags.

DEAR MR. ALLEN:

This is in response to your letter Dated April 30, 1998, on behalf of your client, Cue Stix International, Inc., requesting reconsideration of Port Decision (PD) C81490, dated December 1, 1997, wherein Customs issued a binding ruling on the classification of two billiard cue cases from Taiwan or China. The submitted samples, as well as all other materials, were considered prior to the issuance of this ruling. The samples will be returned to you when the ruling is final.

Facts:

The articles under consideration are two fitted cases designed to carry a billiard cue that can be broken down into two parts.

Style K143 (ACTSC04BL) – is a soft sided billiard cue case. It is approximately 34-inches long and five inches wide. The exterior surface is comprised of 100% woven nylon fabric. An adjustable shoulder strap composed of 100% polypropylene webbing is permanently attached to the spine of the case. The case is opened and closed by means of a zippered closure that extends across the top of the case and approximately 6 inches down the side of the case. The interior is padded and lined with 100% woven brushed nylon fabric to protect the billiard cue. On the front of the case, approximately 6.75 inches from the top, there is a pocket to hold billiard accessories. The closure of the pocket consists of a flap that folds down over the opening and attaches by a hook and loop fastener. A woven nylon sleeve designed to secure one half of the breakdown cue extends vertically down the interior of the case.

Style K201 (ACTT1B1SBK) – is a solid molded oval case with two compartments. Each compartment holds half of a break down billiard cue. The compartments are lined with 100% woven brushed nylon. The case is 32 inches tall, four inches wide, and two inches deep. The top portion of the case is hinged and is closed by means of a zipper. The exterior of the case is vinyl. It has an adjustable shoulder strap composed of 100 percent polypropylene webbing that is attached at each end of the case by means of a hook and loop fastener that encircles the case. There is a zippered pocket that attaches to the case by means of a sleeve that can

slide up and down the case.

In a letter dated September 6, 1997, CBT International, Inc. (CBT), on behalf of Cue Stix International, Inc., requested that Customs issue a binding ruling on the classification of styles K143 and K201. CBT proposed classification in heading 9504 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) which provides for, among other things, billiard accessories.

Customs replied to CBT's request in PD C81490. Customs ruled that the billiard cue cases were properly classifiable in subheading 4202.92.90, HTSUSA, which is an "other" provision that provides for containers similar to binocular, camera, gun cases, etc.

Issue:

Whether the billiard cue cases are classifiable under (1) subheading 4202.92 HTSUSA, as travel, sports, or similar bags, (2) subheading 4202.92.90, HTSUSA, as "other" containers similar to binocular, camera, and gun cases, or (3) heading 9504, HTSUSA, as accessories for an article for parlor games including pinball machines, bagatelle and billiards?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9504, HTSUSA, provides for "[a]rticles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof[.]" Subheading 9504.20, HTSUSA, encompasses, "[a]rticles, parts and accessories for billiards[.]" Without examining any other chapters or headings in the tariff, it would appear that the subject billiard cue cases should be classified in 9504.20, HTSUSA, as accessories for billiards. However, Legal Note 1(d) to Chapter 95 provides that the "chapter does not cover . . . sports bags or other containers of heading 4202." Accordingly, it must be determined if the billiard cue cases are sports bags or "other containers" under heading 4202, HTSUSA. If so, they are not classifiable in Chapter 95, HTSUSA.

Heading 4202, HTSUSA, provides the following:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Moreover, the EN to heading 4202, HTSUSA, state that "the heading covers only the articles specifically named . . . and similar containers." Under the rule of *ejusdem*

generis, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). In *Totes*, the Court of Appeals for the Federal Circuit (CAFC) affirmed the Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are . . . to organize, store, protect and carry various items." The instant billiard cue cases have the same essential characteristics, *i.e.*, to organize, store, protect and carry items, as the containers listed in 4202, HTSUSA. Accordingly, applying the rationale set forth in *Totes*, the billiard cue cases come under the "similar container" provision of 4202, HTSUSA.

The classification of the billiard cue cases as "similar" containers under 4202, HTSUSA, is consistent with the following rulings: HQ 951084, dated March 9, 1993, (holding that a full length tennis racket cover designed to carry more than one racket as well as other items is properly classifiable in 4202, HTSUSA); HQ 085376, dated May 1, 1990, (ruling that a nylon bag designed for carrying a croquet set is classifiable under Heading 4202, HTSUSA, unless the bag was a component of a set, in which case it is classifiable under Chapter 95); and HQ 085918, dated March 2, 1990, (classifying a surf board bag with nylon webbing shoulder straps and handles in heading 4202, HTSUSA, because it is similar to the exemplars set forth in the EN to 4202, HTSUSA, and because it is designed to carry a personal effect, *i.e.*, a surf board).

In contrast to the above listed rulings, in HQ 084694, dated August 29, 1989, Customs classified a tennis racket cover in subheading 9506.51.6000, HTSUSA, as an accessory to lawn-tennis rackets. Customs subsequently narrowed and distinguished this ruling in HQ 086567, dated May 14, 1990. The tennis racket case under consideration in the subsequent ruling, HQ 086567, was a fitted cover, designed to carry two rackets. It also had a pocket to hold balls and other small items. Customs ruled that the subsequent racket cover was a sports bag under 4202, HTSUSA, because (1) it was not designed for a particular racket, and (2) it had the capacity to carry small items other than the racket. Like the tennis racket cover in HQ 086567, the billiard cue cases (1) are not uniquely designed to hold or cover a particular billiard cue, and (2) have a pouch that enables them to hold small items such as cue tips, chalk, resin, and gloves.

Subheading 4202.92, HTSUSA, provides for articles not already provided for in the previous subheadings, that have an outer surface of sheeting of plastic or of textile materials. Subheadings 4202.92.15, HTSUSA, through 4202.92.45, HTSUSA, provide for travel, sports and similar bags. Subheadings 4202.92.60, HTSUSA, through 4202.92.90, HTSUSA, are residual provisions and provide for "other" containers. "Sports bags" more accurately describes the billiard cue cases under consideration than does "other" containers. Accordingly, the billiard cue cases are classifiable under subheadings 4202.92.3031, HTSUSA, and 4202.92.4500, HTSUSA, as sports bags.

Moreover, the EN to heading 4202, HTSUSA, state that "sports bags" includes articles such as golf bags, gym bags, tennis racket carrying bags, ski bags and fishing bags. Accordingly, Customs has classified bags and containers that are designed to carry a particular kind of sporting good as "sports bags." See HQ 953747, dated June 10, 1993, (a sailboard mast carrying bag with woven straps is properly classifiable as a sports bag); HQ 086896, dated June 25, 1990, (ruling that a surfboard carrying bag with shoulder straps is properly classifiable as a sports bag, as opposed to Chapter 95, because it is similar in function to a ski and golf bag); HQ 087294, dated October 5, 1990, (holding that a full length tennis racket cover with a strap, and imported separately from the racket, is classifiable as a sports bag); and HQ 084684, dated July 21, 1989, (ruling that a player bag with two woven straps designed to carry softball bats, shoes, gloves and uniforms was

sufficiently similar to the bags described in the EN to 4202, HTSUSA, to be considered a "sports bag"). See also, HQ 951084, HQ 085376, and HQ 085918, *supra*. Like the items listed above, the billiard cue cases are "sports bags," and are classifiable as such.

Style K143 is properly classified under subheading 4202.92.3031, HTSUSA, which provides for, among other things, sports bags with outer surface of nylon fabric.

Style K201 is properly classified under subheading 4202.92.4500, HTSUSA, which provides for, among other things, sports bags with outer surface of sheeting of plastic.

Holding:

Style K143, which is made from 100% woven nylon shell and lining fabric with 100% woven polypropylene webbing, is properly classified in subheading 4202.92.3031, HTSUSA, which provides for "Trunks, suitcases...sports bags...and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other: Other: Of man-made fibers: Other." The general column one rate of duty is 18.3 percent *ad valorem*. The textile category number is 670.

Style K201, which has an outer surface of sheeting of plastic, is properly classified in subheading 4202.92.4500, HTSUSA, which provides for "Trunks, suitcases...sports bags...and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other." The general column one rate of duty is 20 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) or restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

CLA-2 RR:CR:TE 964800 JFS
Category: Classification
Tariff No. 4202.92.4500

MS. PAMELA PINTER
BIG APPLE CUSTOMS BROKERS, INC.
151-02 132nd Avenue
Jamaica, NY 11434

Re: Revocation of NY E86010; Classification of Billiard Cue Carrying Case; 4202, HTSUSA; Sports, Travel and Similar Bags.

DEAR MS. PINTER:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) E86010, dated September 1, 1999, concerning the classification of a billiard cue case under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of the ruling, it has been determined that the classification of the billiard cue case in 4202.92.9060, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY E86010.

Facts:

In a letter dated August 17, 1999, you requested, on behalf of your client, Regent Sports Corp., a tariff classification ruling for a pool cue case from Taiwan. In response to your request, Customs issued NY E86010, which classified the billiard cue case under 4202.92.9060, HTSUSA, which provides for containers similar to those enumerated in heading 4202 and that have not already been provided for in the preceding subheadings.

The billiard cue case was described as:

A specially fitted case for pool cue sticks. The exterior surface is manufactured of imitation nylon PVC plastic. The interior is padded to protect the cue sticks during storage/travel. The case features a zippered top closure, a web adjustable shoulder strap and an exterior accessory pocket with a hook and loop fastener.

Issue:

Whether the billiard cue case is classifiable as a travel, sports, or similar bag under heading 4202.92, HTSUSA?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9504, HTSUSA, provides for "[a]rticles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof[.]" Subheading 9504.20, HTSUSA, encompasses, "[a]rticles, parts and accessories for billiards[.]" Without examining any other chapters or headings in the tariff, it would appear that the subject billiard cue case should be classified in 9504.20, HTSUSA, as an accessory for billiards. However, Legal Note 1(d) to Chapter 95 provides that the "chapter does not cover . . . sports bags or other containers of heading 4202." Accordingly, it must be determined if the billiard cue case is a sports bag or "other container" under heading 4202, HTSUSA. If so, it is not classifiable in Chapter 95, HTSUSA.

Heading 4202, HTSUSA, provides the following:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases,

cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Moreover, the EN to heading 4202, HTSUSA, state that "the heading covers only the articles specifically named . . . and similar containers." Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). In *Totes*, the Court of Appeals for the Federal Circuit (CAFC) affirmed the Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are. . . to organize, store, protect and carry various items." The instant billiard cue case has the same essential characteristics, *i.e.*, to organize, store, protect and carry items, as the containers listed in 4202, HTSUSA. Accordingly, applying the rationale set forth in *Totes*, the billiard cue case comes under the "similar container" language of 4202, HTSUSA.

The classification of the billiard cue case as a "similar" container under 4202, HTSUSA, is consistent with the following rulings: HQ 951084, dated March 9, 1993 (holding that a full length tennis racket cover designed to carry more than one racket as well as other items is properly classifiable in 4202, HTSUSA); HQ 085376, dated May 1, 1990, (ruling that a nylon bag designed for carrying a croquet set is classifiable under Heading 4202, HTSUSA, unless the bag was a component of a set, in which case it is classifiable under Chapter 95); and HQ 085918, dated March 2, 1990, (classifying a surf board bag with nylon webbing shoulder straps and handles in heading 4202, HTSUSA, because it is similar to the exemplars set forth in the EN to 4202, HTSUSA, and because it is designed to carry a personal effect, *i.e.*, a surf board).

In contrast to the above listed rulings, in HQ 084694, dated August 29, 1989, Customs classified a tennis racket cover in subheading 9506.51.6000, HTSUSA, as an accessory to lawn-tennis rackets. Customs subsequently narrowed and distinguished this ruling in HQ 086567, dated May 14, 1990. The tennis racket case under consideration in the subsequent ruling, HQ 086567, was a fitted cover, designed to carry two rackets. It also had a pocket to hold balls and other small items. Customs ruled that the subsequent racket cover was a sports bag under 4202, HTSUSA, because (1) it was not designed for a particular racket, and (2) it had the capacity to carry small items other than the racket. Like the tennis racket cover in HQ 086567, the billiard cue case (1) is not uniquely designed to hold or cover a particular billiard cue, and (2) has a pouch that enables it to hold small items such as cue tips, chalk, resin, and gloves.

Subheading 4202.92, HTSUSA, provides for articles not already provided for in the previous subheadings, that have an outer surface of sheeting of plastic or of textile materials. Subheadings 4202.92.15, HTSUSA, through 4202.92.45, HTSUSA, provide for travel, sports and similar bags. Subheadings 4202.92.60, HTSUSA, through 4202.92.90, HTSUSA, are residual provisions and provide for "other" containers. "Sports bags" more accurately describes the billiard cue case under consideration than does "other" containers. Accordingly, the billiard cue case is classifiable under subheading 4202.92.4500, HTSUSA, as a sports bag with an outer surface of sheeting of plastic.

Moreover, the EN to heading 4202, HTSUSA, state that "sports bags" includes articles such as golf bags, gym bags, tennis racket carrying bags, ski bags and fishing bags. Accordingly, Customs has classified bags and containers that are designed to carry a particular kind of sporting good as "sports bags." See HQ

953747, dated June 10, 1993, (a sailboard mast carrying bag with woven straps is properly classifiable as a sports bag); HQ 086896, dated June 25, 1990, (ruling that a surfboard carrying bag with shoulder straps is properly classifiable as a sports bag, as opposed to Chapter 95, because it is similar in function to a ski and golf bag); HQ 087294, dated October 5, 1990, (holding that a full length tennis racket cover with a strap, and imported separately from the racket, is classifiable as a sports bag); and HQ 084684, dated July 21, 1989, (ruling that a player bag with two woven straps designed to carry softball bats, shoes, gloves and uniforms was sufficiently similar to the bags described in the EN to 4202, HTSUSA, to be considered a "sports bag"). See also, HQ 951084, HQ 085376, and HQ 085918, *supra*. Like the items listed above, the billiard cue case is a "sports bag," and is classifiable as such.

The billiard cue case is properly classifiable under 4202.92.4500, HTSUSA.

Holding:

The billiard cue case is properly classifiable under 4202.92.4500, HTSUSA, which provides for "Trunks, suitcases...sports bags...and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other." The general column one rate of duty is 20 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) or restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

CLA-2 RR:CR:TE 964801 JFS
Category: Classification
Tariff No. 4202.92.4500

CUE & CASE
5585 University Blvd. W.
Jacksonville, Florida 32216

Re: Modification of NY 865731; Classification of Billiard Cue Carrying Case; 4202, HTSUSA; Sports, Travel and Similar Bags.

DEAR SIR OR MADAM:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) 865731, dated August 26, 1991, wherein Customs classified four different styles of billiard cue cases under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of the ruling, it has been determined that the classification of two styles of the billiard cue cases in 4202.92.9040, HTSUSA, was incorrect. For the reasons that follow, this ruling modifies NY 865731.

Facts:

In a letter dated July 24, 1991, you requested a tariff classification ruling for four styles of billiard cue cases from Taiwan. Style numbers C-10 and P-2 were

soft padded cue cases. Style numbers C-42 and C-51 were hard cases covered with a vinyl material. In response to your letter, Customs classified styles C-42 and C-51 under subheading 4202.92.9040, HTSUSA, which provides for cases similar to those enumerated in the heading that have not already been provided for in the preceding subheadings. Style C-10 was classified under subheading 4202.92.4500, HTSUSA, which provides for, among other things, sports bags with an outer surface of sheeting of plastic. Style P-2 was classified under subheading 4202.92.3030, HTSUSA, which provides for, among other things, sports bags with an outer surface of textile materials, of man-made fibers.

Issue:

Whether billiard cue cases C-42 and C-51 are classifiable as sports bags under subheading 4202.92, HTSUSA?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9504, HTSUSA, provides for "[a]rticles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof[.]" Subheading 9504.20, HTSUSA, encompasses, "[a]rticles, parts and accessories for billiards[.]" Without examining any other chapters or headings in the tariff, it would appear that the subject billiard cue cases should be classified in 9504.20, HTSUSA, as accessories for billiards. However, Legal Note 1(d) to Chapter 95 provides that the "chapter does not cover . . . sports bags or other containers of heading 4202." Accordingly, it must be determined if the billiard cue cases are sports bags or "other containers" under heading 4202, HTSUSA. If so, they are not classifiable in Chapter 95, HTSUSA.

Heading 4202, HTSUSA, provides the following:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Moreover, the EN to heading 4202, HTSUSA, state that "the heading covers only the articles specifically named . . . and similar containers." Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the es-

sential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). In *Totes*, the Court of Appeals for the Federal Circuit (CAFC) affirmed the Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are. . . to organize, store, protect and carry various items." The instant billiard cue cases have the same essential characteristics, *i.e.*, to organize, store, protect and carry items, as the containers listed in 4202, HTSUSA. Accordingly, applying the rationale set forth in *Totes*, the billiard cue cases come under the "similar container" language of heading 4202, HTSUSA.

The classification of the billiard cue cases as "similar" containers under 4202, HTSUSA, is consistent with the following rulings: HQ 951084, dated March 9, 1993 (holding that a full length tennis racket cover designed to carry more than one racket as well as other items is properly classifiable in 4202, HTSUSA); HQ 085376, dated May 1, 1990 (ruling that a nylon bag designed for carrying a croquet set is classifiable under Heading 4202, HTSUSA, unless the bag was a component of a set, in which case it is classifiable under Chapter 95); and HQ 085918, dated March 2, 1990, (classifying a surf board bag with nylon webbing shoulder straps and handles in heading 4202, HTSUSA, because it is similar to the exemplars set forth in the EN to 4202, HTSUSA, and because it is designed to carry a personal effect, *i.e.*, a surf board).

In contrast to the above listed rulings, in HQ 084694, dated August 29, 1989, Customs classified a tennis racket cover in subheading 9506.51.6000, HTSUSA, as an accessory to lawn-tennis rackets. Customs subsequently narrowed and distinguished this ruling in HQ 086567, dated May 14, 1990. The tennis racket case under consideration in the subsequent ruling, HQ 086567, was a fitted cover, designed to carry two rackets. It also had a pocket to hold balls and other small items. Customs ruled that the subsequent racket cover was a sports bag under 4202, HTSUSA, because (1) it was not designed for a particular racket, and (2) it had the capacity to carry small items other than the racket. Like the tennis racket cover in HQ 086567, the billiard cue cases (1) are not uniquely designed to hold or cover a particular billiard cue, and (2) have a pouch that enable them to hold small items such as cue tips, chalk, resin, and gloves.

Subheading 4202.92, HTSUSA, provides for articles not already provided for in the previous subheadings, that have an outer surface of sheeting of plastic or of textile materials. Subheadings 4202.92.15, HTSUSA, through 4202.92.45, HTSUSA, provide for travel, sports and similar bags. Subheadings 4202.92.60, HTSUSA, through 4202.92.90, HTSUSA, are residual provisions and provide for "other" containers. "Sports bags" more accurately describes the billiard cue cases under consideration than does "other" containers. Accordingly, the billiard cue cases are classifiable under subheading 4202.92.4500, HTSUSA, as sports bags with an outer surface of sheeting of plastic.

Moreover, the EN to heading 4202, HTSUSA, state that "sports bags" includes articles such as golf bags, gym bags, tennis racket carrying bags, ski bags and fishing bags. Accordingly, Customs has classified bags and containers that are designed to carry a particular kind of sporting good as "sports bags." See HQ 953747, dated June 10, 1993, (a sailboard mast carrying bag with woven straps is properly classifiable as a sports bag); HQ 086896, dated June 25, 1990, (ruling that a surfboard carrying bag with shoulder straps is properly classifiable as a sports bag, as opposed to Chapter 95, because it is similar in function to a ski and golf bag); HQ 087294, dated October 5, 1990, (holding that a full length tennis racket cover with a strap, and imported separately from the racket, is classifiable as a sports bag); and HQ 084684, dated July 21, 1989, (ruling that a player bag with two woven straps designed to carry softball bats, shoes, gloves and uniforms was sufficiently similar to the bags described in the EN to 4202, HTSUSA, to be considered a "sports bag"). See also, HQ 951084, HQ 085376, and HQ 085918, *supra*. Like the items listed above, the billiard cue cases are "sports bags," and are classifiable as such.

The billiard cue cases are properly classifiable under subheading 4202.92.4500, HTSUSA.

Holding:

The billiard cue cases C-42 and C-51 are properly classifiable under 4202.92.4500, HTSUSA, which provides for "Trunks, suitcases...sports bags...and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other." The general column one rate of duty is 20 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) or restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN MATHEMATICAL TEACHING AIDS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the classification of certain mathematical teaching aids.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of certain mathematical teaching aids, and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before March 30, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: General Classification Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Bornstein,
General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of mathematical teaching aids, specifically "Base Ten Blocks" and "Color Tiles." Although in this notice Customs is specifically referring to New York Ruling Letter NY 878668, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the

Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY 878668, dated October 7, 1992, products referred to as mathematical teaching aids, specifically, "Attribute Blocks, Base Ten Blocks, Coins, Color Tiles and Counters," were determined to be classifiable under subheading 3926.10.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies[.]" This ruling letter is set forth in "Attachment A" to this document.

Since the issuance of NY 878668, Customs has had a chance to review the classification of this merchandise and has determined that the classifications pertaining to the "Base Ten Blocks" and "Color Tiles" are in error. We now believe these articles are classifiable under subheading 3920.10.00, HTSUS, which provides for "[o]ther plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials. Of polymers of ethylene[.]"

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY 878668 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964363 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 6, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

October 7, 1992
CLA-2-39:S:N:N3D:221 878668
Category: Classification
Tariff No. 3926.10.0000

MS. ROSALIE LANDEN
THE HIPAGE COMPANY
Greensboro Business Park
532 N. Regional Road, Suite D, 27409
P.O. Box 35026 Greensboro, N.C. 27425

Re: The tariff classification of overhead educational items from China.

DEAR MS. LANDEN:

In your letter dated September 22, 1992, on behalf of U.S. Worldwide Inc., you requested a tariff classification ruling.

The educational items consist of "Attribute Blocks," "Base Ten Blocks," "Coins," "Color Tiles" and "Counters." These items are used to teach children from four years of age to fourth grade how to count, recognize shapes and name colors. All are composed of plastics and they are meant for use with overhead projectors.

The applicable subheading for the overhead educational items will be 3926.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics...office or school supplies. The rate of duty will be 5.3 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

CLA-2 RR:CR:GC 964363 BJB
Category: Classification
Tariff No. 3920.10.00; 3926.10.00

MS. CORINNE DARNELL
THE HIPAGE COMPANY
Greensboro Business Park
532 North Regional Road, Suite D, 27409
Greensboro, NC 27425

Re: NY 878668 Modified; Math Teaching Aids.

DEAR Ms. DARNELL:

This is in reference to NY 878668, which the Director of Customs National Commodity Specialist Division, New York, issued to The Hipage Company on October 7, 1992, in response to a letter of September 22, 1992, on behalf of U.S. Worldwide Inc. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of "Attribute Blocks," "Base Ten Blocks," "Coins," "Color Tiles" and "Counters," described as articles used to teach children to count, recognize shapes and name colors.

We have reviewed the decision in NY 878668 and have determined that the classification of the "Base Ten Blocks" and the "Color Tiles" are in error. This ruling modifies NY 878668 with respect to the "Base Ten Blocks" and the "Color Tiles."

Facts:

According to information provided with the letter of September 22, 1999, the merchandise referred to as "Base Ten Blocks," and "Color Tiles," are used primarily by teachers in elementary schools, to demonstrate "base ten" and metric concepts in mathematics. The Base Ten Blocks are packaged in an assortment including each of the following: (1) 30 single units (place value ones) measuring one centimeter in each dimension; (2) 20 rods (place value tens - bars) measuring one centimeter by one centimeter by ten centimeters, with slight indentations on each bar's surface dividing each bar into ten equal one centimeter units; and (3) 2 flat, square plates (place value 100s) measuring ten centimeters by ten centimeters by one centimeter, with slight indentations on the surface dividing each plate into one hundred units. Each of the units in the place value tens and place value 100s is the size of the place value one cube unit.

The "Base Ten Blocks" are all made of clear plastic for use on an overhead projector in a classroom situation. A sample of each of the components of the "Base Ten Blocks" assortment was provided. The place value 10s - bars, and the place value 100s - square plates, are both essentially flat in appearance.

The "Color Tiles" are an assortment of one-inch square tiles in ten different colors. They are all made of plastic. There are approximately 50 tiles to a package. The tiles are used both in, and out of, a classroom situation to teach a variety of mathematical concepts, including: "counting, estimation, whole number computation, fractions, patterns, geometry, [and] graphs[.]"

In NY 878668, the "Base Ten Blocks" and the "Color Tiles" were classified under subheading 3926.10.00, HTSUS, which provides for "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

Issue:

Whether the "Base Ten Blocks" and "Color Tiles" are classifiable under subheading 3926.10.00, HTSUS, as "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, HTSUS, goods are to be classified according to the terms of the headings and any relative section or chapter notes, provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. See T.D. 98-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS headings under consideration are as follows:

- 3920 Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials.
- 3920.10.00 Of polymers of ethylene
- 3926 Other articles of plastics and articles of other materials of headings 3901 to 3914:
- * * * * *
- 3926.10.00 Office or school supplies
- * * * * *
- 9023 Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof
- * * * * *

Note 2(r), Chapter 39, HTSUS, states that the chapter does not cover: "[a]rticles of chapter 90 (for example, optical elements, spectacle frames, drawing instruments)[.]" Therefore, if the "Base Ten Blocks" and "Color Tiles" are goods classifiable under heading 9023, they cannot be classifiable under headings 3920 or 3926, HTSUS.

The ENs to heading 9023, provide a list of eleven examples of instruments, apparatus and models designed for demonstrational purposes. All of the examples provided are complex and sophisticated articles, including "(1) [s]pecial demonstrational machines or appliances . . . , (3) [t]raining dummies, constituting an inflatable life-size model of the human body with artificial respiratory parts reproducing those of a human being, (6) [m]odels, etc., for artillery training, used in training courses held indoors, and (11) [m]ilitary tank simulators which are used for the training . . . of tank drivers."

"Base Ten Blocks" and the "Color Tiles" are used as instructional aids to teach mathematical counting concepts. Although counting is fundamental to mathematics, and mathematical principles are often complex, neither the "Base Ten Blocks" nor the "Color Tiles" rise to the level of complexity nor sophistication exhibited by the examples provided in the ENs to heading 9023. While examples of models are provided in the ENs, the term "model" is not defined in the section or chapter notes or in the ENs for heading 9023.

In the absence of a contrary legislative intent, tariff terms that are not defined in an HTSUS section or chapter note, or clearly described in an EN, are construed in accordance with their common and commercial meanings, which are presumed to be the same. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Dictionaries, scientific authorities and other reliable lexicographic sources are often consulted; and, where the term under consideration is technical in nature, appropriate technical sources of information should be consulted. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

In this case, a typical definition of the term "model" is "a small copy or imitation of an existing object, as a ship, building, etc., made to scale;" "a preliminary representation of something, serving as the plan from which the final, usually larger, object is to be constructed;" or "a hypothetical description, often based on an analogy, used in analyzing or explaining something" (Webster's New World Dictionary, 3rd College Ed., 1988, p. 871.) These definitions support the proposition that a "model" involves an intricate structure, or is a representation of a complex hypothetical or other difficult concept otherwise too complex to understand by mere explanation, analogy, or simple analysis. Counting in base ten with small pieces of plastic or with plastic cubes, bars or squares, is neither a complicated task

nor a sophisticated procedure.

Moreover, both articles are sold in packets containing relatively small numbers of the merchandise. Thus, either article could readily be purchased by teachers or parents, and used either in school or in the home. The articles are not limited in their use as a teacher's instructional aid solely suitable on an overhead projector in the classroom. We are of the opinion that neither the "Base Ten Blocks," nor the "Color Tiles," are described by heading 9023, HTSUS.

With respect to the potential applicability of heading 3920, HTSUS, Note 10, Chapter 39, states that, "[i]n headings 3920 and 3921, the expression *'plates, sheets, film, foil and strip'* applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use)." All three components of the "Base Ten Blocks" and all of the "Color Tile" pieces are essentially flat and rectangular or square geometric in form.

The ENs to heading 3920, HTSUS, in pertinent part state, "[a]ccording to Note 10 to this Chapter, the expression *'plates, sheets, film, foil and strip'* applies only to plates, sheets, film, foil and strip and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked (for example, polished, embossed, coloured, merely curved or corrugated), uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use, for example, tablecloths). Although indentations appear on two components of the "Base Ten Blocks," on the place value 10s - bars and on the place value 100s - squares, these superficial markings do not constitute "further working," and therefore do not change their nature. The indentations are formed during the molding process and not after the formation of the plate. Thus, even though "[p]lates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square) are generally classified as articles of **headings 39.18, 39.19 or 39.22 to 39.26**[,]," (EN 39.20, p. 619), these components are not "further worked" and retain their essentially flat shape and are thus, classifiable under heading 3920, HTSUS. On the condition that the articles are made of an ethylene polymer, they are provided for under subheading 3920.10, HTSUS, which covers "[o]ther plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials. Of polymers of ethylene[.]" See NY C81577, dated November 28, 1997, and NY F83529, dated March 24, 2000, for similar rulings.

The ENs to heading 3926, HTSUS, emphasize in pertinent part, that heading 3926 only covers "articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter [39]) or of other materials of headings 39.01 to 39.14." Because the "Base Ten Blocks" and the "Color Tiles" are provided for under heading 3920, HTSUS, they are therefore excluded from consideration under the more general "basket provision" of heading 3926, HTSUS, as "[o]ther articles of plastics . . ."

In NY 878668, the "Base Ten Blocks" and the "Color Tiles" were held to be classifiable under subheading 3926.10.00, HTSUS, based upon the understanding that they were articles made of plastic and used as a school supply. However, at GRI 1, only once a determination is reached as to which HTSUS heading covers these articles would further reference be made to the 6-digit subheading level.

Holding:

At GRI 1, the "Base Ten Blocks" and "Color Tiles" are classifiable under subheading 3920.10.00, HTSUS, which provides for "[o]ther plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials. Of polymers of ethylene[.]"

Effect On Other Rulings:

NY 878668, dated October 7, 1992, is modified with respect to the "Base Ten Blocks" and the "Color Tiles," as set forth herein.

JOHN DURANT,
Director,
Commercial Rulings Division.

WITHDRAWAL OF PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ELECTRICAL LIGHT ARTICLES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of proposed revocation of ruling letters and treatment relating to the classification of electrical light articles.

SUMMARY: This notice advises interested parties that Customs is withdrawing its proposal to revoke ruling letters pertaining to the classification of electrical light articles. Notice of the proposal was published on December 13, 2000, in the CUSTOMS BULLETIN, pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057).

EFFECTIVE DATE: February 28, 2001.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Commercial Rulings Division (202) 927-2511.

SUPPLEMENTARY INFORMATION:

BACKGROUND.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), Customs published a notice in the December 13, 2000, CUSTOMS BULLETIN, Volume 34, No. 50, proposing to revoke New York Ruling Letters (NYRL) C89096, C89018, C88503 and C88297. All of these rulings classified various light articles within subheading 9405.30.00, HTSUS, which provides for lights sets of a kind used for Christmas trees. No comments were received in response to this notice.

Subsequent to publication of that notice, we have determined that the articles contained in these four rulings were substantially similar to electric light merchandise discussed in *Primal Lite, Inc., v. U.S.*, 15 F.Supp. 2d 915 (Ct. Int'l Trade 1998), *aff'd*. 182 F.3d 1362 (CAFC 1999). Moreover, as Customs does not seek to limit the applicability of the *Primal Lite* decision with respect to the articles discussed in these rulings, we find the court decision of *Sea-Land Service, Inc.; American President Lines, Ltd., v. U.S.*, (Ct. Int'l Trade 1999), Slip Op. 99-100 to be controlling, and hereby withdraw issuance of the 19 U.S.C. §1625(c) proposed notice published on December 13, 2000, in the CUSTOMS BULLETIN, Volume 34, No. 50.

Therefore, this notice advises interested parties that as a result of the Court's determination in *Primal Lite*, the determinations in NYRL C89096, C89018, C88503 and C88297 are revoked by operation of law as determined by *Sea-Land Service, Inc.* Accordingly, Customs is withdrawing its proposal to revoke NYRL C89096, C89018, C88503 and C88297.

Dated: February 6, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF A PORCELAIN DEMI-
TASSE (CUP) AND SAUCER SET

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of a porcelain demitasse (cup) and saucer set.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a porcelain demitasse (cup) and saucer set under the Harmonized Tariff Schedule of the United States (HTSUS). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before March 30, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Nanne Eliot Lewine, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a porcelain demitasse (cup) and saucer set. Although in this notice Customs is specifically referring to NY G83712, dated November 17, 2000, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the

importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY G83712, dated November 17, 2000, set forth as Attachment A to this document, Customs classified a porcelain demitasse (cup) and saucer set, imported from China, under subheading 6911.10.80, HTSUS, which provides for: Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: ... Other.

Since the issuance of this ruling, Customs has received additional information regarding the merchandise and has determined that the original classification is in error. The subsequent information described the merchandise as ornamental articles which fall under subheading 6913.10.50, HTSUS, which provides for: Statuettes and other ornamental ceramic articles: Of porcelain or china: Other: Other.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY G83712 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 964805, set forth as Attachment B of this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: February 6, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

November 17, 2000
CLA-2-69:RR:NC:2:227 G83712
Category: Classification
Tariff No. 6911.10.80

MR. FLOYD SIRICO
ROGERS & BROWN CUSTOM BROKERS, INC.
P.O. Box 20160
Charleston, SC 29413-0160

Re: The tariff classification of a porcelain demitasse and saucer set from China.

DEAR MR. SIRICO:

In your letter dated October 23, 2000, on behalf of Gordon International Services, Inc., you requested a tariff classification ruling. Sample is being returned as requested.

The sample submitted is a porcelain demitasse and saucer set with the demitasse measuring approximately 2 ¼ inches across its open top diameter and the saucer measuring about 4 ¼ inches in diameter. The demitasse features an elegantly designed looped handle. The exterior of the set depicts a green-colored design that is bordered with perpendicularly positioned gold-colored hash-like marks encompassed by two gold-colored bands. The set is stated to be valued at \$2.80 per dozen.

You claim that this merchandise is an ornamental cup (demitasse) and saucer since the set, being marketed as an ornamental article, does not perform the function of utilitarian tableware. However, in the condition as imported, the subject merchandise, possessing a decorative appearance, has been found to be principally designed for use as a utilitarian demitasse and saucer.

The applicable subheading for the demitasse and saucer set will be 6911.10.80, Harmonized Tariff Schedule of the United States (HTS), which provides for other tableware, kitchenware...other than of porcelain or china: other. The rate of duty will be 22.9 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist George Kalkines at 212-637-7073.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

CLA-2 RR:CR:GC 964805 nel
Category: Classification
Tariff No. 6913.10.50

MR. FLOYD SIRICO
ROGERS & BROWN CUSTOM BROKERS, INC.
P. O. Box 20160
Charleston, SC 29413-0160

Re: NY G83712 revoked; porcelain demitasse (cup) and saucer set.

DEAR MR. SIRICO:

This is in reference to your letter of December 13, 2000, to Customs National Commodity Specialist Division, on behalf of Gordon International Services, Inc., concerning the classification of a decorative teacup and saucer under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter was referred to this office for reply.

In preparing our response, we have reviewed the decision in NY G83712, issued to you on November 17, 2000, in which the subject porcelain demitasse and saucer set was classified as tableware under subheading 6911.10.80, HTSUS. The information you supplied by letter dated December 13, 2000, significantly changed the facts on which ruling NY G83712 was based. Therefore, the classification of the merchandise provided in NY G83712 no longer reflects the view of Customs.

Facts:

The merchandise is described in NY G83712 as a porcelain demitasse and saucer set, with the demitasse measuring approximately 2 1/4" across its open top diameter and the saucer measuring about 4 1/4" in diameter. The demitasse has an elegantly designed looped handle. The exterior of the set depicts a green colored design, bordered with gold-colored bands. The set is stated to be valued at \$2.80 per dozen.

You claimed the merchandise was an ornamental cup and saucer. Customs, based on the information you originally provided, found the merchandise to possess a decorative surface but principally designed for use as a utilitarian demitasse and saucer, which was classifiable as tableware or kitchenware under subheading 6911.10.80, HTSUS.

Your letter of December 13, 2000, provided the following additional information:

- (1) The lead content of the paint on these teacups are (sic) too high to be approved by FDA.
- (2) All these cups are clearly marked NOT FOR FOOD USE and are marketed as candleholders.
- (3) Their only method of marketing this product is strictly for decorative use, because they are not FDA approved and cannot be marketed as tableware.

This information affects the utilitarian nature of the demitasse and saucer at issue.

A sample of the merchandise was not provided to us with the request for reconsideration.

Issue:

Whether the subject porcelain demitasse (cup) and saucer set is properly classifiable as porcelain tableware or kitchenware under subheading 6911.10, HTSUS, or as an ornamental ceramic article under subheading 6913.10, HTSUS.

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the HTSUS, the Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, may be used. The ENs, although not dispositive or legally binding, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings. Customs believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The HTSUS subheadings under consideration for the classification of the porcelain demitasse and saucer set are as follows:

6911.10: Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware.

6913.10: Statuettes and other ornamental ceramic articles: Of porcelain or china.

Decorated tableware and other domestic articles which serve a useful purpose no less efficiently than their plainer counterparts, are classified in heading 6911 or 6912, HTSUS, rather than in heading 6913, HTSUS. *See* EN 69.13(B).

Heading 6913, HTSUS, covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices, assembly rooms, churches, etc., and outdoor ornaments. *See* EN 69.13. This heading covers articles, which have no utility value but are wholly ornamental, as well as articles whose only usefulness is to support or contain other decorative articles or to add to their decorative effect. EN 69.13(A).

Additionally, heading 6913, HTSUS, covers tableware and other domestic articles only if the usefulness of the articles is clearly subordinate to their ornamental character. In general, tableware and domestic utensils are designed essentially to serve useful purposes, and any decoration is usually secondary so as not to impair the usefulness. *See* EN 69.13(B). Congress intended for "tableware" to provide for only such articles as are chiefly used upon a table for the service of meals, and that term was not intended to cover novelty articles. *See United States v. The Baltimore & Ohio R.R. Co.*, 47 C.C.P.A. 1, 3 (1959) (B&O).

The instant demitasse cup and saucer, similar to cups and saucers in issue in B&O, are not used chiefly for serving coffee or other liquids, but their chief use is for display as ornaments. Merely because one can drink from the cups and saucers does not establish the chief use thereof. B&O at 5. The B&O court held that certain demitasse cups and saucers of comparatively small size, sold at a low price, and used chiefly for display as ornaments, were classifiable, not as tableware, but as ornamental articles.

Indeed, it is the decoration of the instant demitasse and saucer set that impairs its utilitarian value. Based on the information provided, the paint used to decorate the cup, marked NOT FOR FOOD USE, has a sufficient quantity of lead to prohibit its sale as tableware. As such, it is unfit for the purpose of holding a beverage for human consumption. Therefore, the decorated demitasse and saucer set has no useful purpose as a cup and saucer of "tableware" and may be considered primarily ornamental.

It must be noted that not all demitasse cups and saucers should be considered "ornamental." Similar demitasse cups and saucers brought in chiefly for drinking rather than exhibiting would be described as "tableware." *See* B&O 7-8, in which the court made clear that this was not a ruling that all demitasse cups are outside the category of "tableware."

The instant demitasse cup and saucer set, marked "NOT FOR FOOD USE," marketed as a candleholder, has no utility value as a cup and saucer and does not belong to the class of articles which is chiefly used upon the table for the service of meals, therefore, it cannot be classified as tableware under subheading 6911.10.80, HTSUS. The instant set is wholly ornamental and as such belongs to the class of novelty articles, chiefly used for display or decoration, under subheading 6913.10.50, HTSUS.

Holding:

The porcelain demitasse (cup) and saucer set is classifiable as an ornamental article under subheading 6913.10.50, HTSUS, which provides for: Statuettes and other ornamental ceramic articles: Of porcelain or china: Other: Other.

Effect on other Rulings:

NY G83712, dated November 17, 2000, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF AN ACRYLIC POLYMER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of an acrylic polymer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of an acrylic polymer under the Harmonized Tariff Schedule of the United States (HTSUS). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before March 30, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Nanne Eliot Lewine, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of an acrylic polymer. Although in this notice Customs is specifically referring to NY F88342, dated June 30, 2000, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY F88342, dated June 30, 2000, set forth as Attachment A to this document, Customs classified an acrylic polymer, identified as Noxtite PA-402 (CAS #67254-76-6), which was described as an ACM (acrylic acid ester rubber) polymer for use in the manufacture of automotive oil seals, under subheading 3906.90.2000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Other: Plastics.

Since the issuance of this ruling, Customs has tested additional samples of the merchandise and has determined that the classification is in error. The subsequent samples met the requirements for elastomers in Chapter 39, Additional U.S. Note 1, and are classifiable

under subheading 3906.90.1000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Elastomeric.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY F88342 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 964704, set forth as Attachment B of this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: February 5, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

June 30, 2000
CLA-2-39:RR:NC:2:237 F88342
Category: Classification
Tariff No. 3906.90.2000

MS. KIMBERLY M. NOVAK
EMERY CUSTOMS BROKERS
6940C Engle Road
Middleburg Heights, Ohio 44130

Re: Classification of Noxtite PA-402 acrylic polymer from Japan.

DEAR MS. NOVAK:

Your letter of May 24, 2000, on behalf of Freudenberg NOK of New Haven requested a classification ruling for Noxtite PA-402 (CAS-67254-76-6) described as an ACM (acrylic acid ester rubber) polymer for use in the manufacture of automotive oil seals.

The dumbbell samples provided do not meet requirements for synthetic rubber in Chapter 40 Note 4(a): unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-thermoplastic substances which at 18-29°C will not break when extended to three times their original length and will return after being extended twice their original length, in 5 minutes, to not greater 1-1/2 times their original length.

Accordingly, Noxtite PA-402 acrylic polymer is classifiable in 3906.90.2000, HTSUS, which provides for other acrylic plastics in primary forms. The rate of duty is 6.3 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you

have any questions regarding the ruling, contact NIS Frank Cantone at 212-637-7018.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

CLA-2 RR:CR:GC 964704nel
Category: Classification
Tariff No. 3906.90.1000

MS. KIMBERLY M. NOVAK
CUSTOMS COMPLIANCE ANALYST
EMERY CUSTOMS BROKERS
6940A Engle Road
Middleburg Heights, OH 44130

Re: Reconsideration of NY F88342; Noxtite PA-402 acrylic polymer.

DEAR MS. NOVAK:

This is in response to your letters of October 24 and November 27, 2000, to the Customs National Commodity Specialist Division, on behalf of Freudenberg-NOK concerning the classification of Noxtite PA-402, under the Harmonized Tariff Schedule of the United States (HTSUS). Your letters were referred to this office for reply.

In preparing our response, we have reviewed the decision in NY F88342, dated June 30, 2000, in which Noxtite PA-402 was classified as an acrylic plastic in primary form under subheading 3906.90.2000, HTSUS. The information you supplied by letter dated November 27, 2000, changed the facts on which ruling NY F88342 was based. Therefore, we are changing the classification of the merchandise and revoking NY F88342.

Facts:

The merchandise is described as Noxtite PA-402, an acrylic polymer. The product is a copolymer consisting of several acrylic monomers with a high proportion of carbon fillers.

You claimed classification in subheading 4002.99.0000, HTSUS, which provides for: Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip: Other: Other.

The dumbbell-shaped samples submitted for NY F88342 failed to meet the test for compliance with the vulcanization, elongation, and recovery criteria for synthetic rubber in Chapter 40 note 4(a), HTSUS, due to a high content of carbon reinforcing pigment, which made these samples brittle. Customs classified the merchandise in subheading 3906.90.2000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Other: Plastics.

Subsequent dumbbell-shaped samples met Chapter 40 note 4(a), HTSUS, requirements due to a lower carbon content as evidenced by the vulcanizing recipe and test results.

Issue:

Is Noxtite PA-402 classifiable as plastic under Chapter 39, HTSUS, or as rubber

under Chapter 40, HTSUS?

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. The majority of imported goods are classified by application of GRI 1; that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, then the remaining GRIs may be applied.

The following headings and legal notes are relevant to the classification of Noxite PA-402, acrylic polymer:

Heading 3906, HTSUS, provides for: Acrylic polymers in primary forms.

Chapter 39 Note 3 states that: Headings 3901 to 3911 apply only to goods of a kind produced by chemical synthesis, falling in the following categories: ... (c) Other synthetic polymers with an average of at least five monomer units.

Chapter 39 Note 4 states that: The expression "copolymers" covers all polymers in which no single monomer contributes 95 percent or more by weight to the total polymer content.

Chapter 39, Additional U.S. Note 1 states that: For the purposes of this chapter, the term "elastomeric" means a plastic material which after cross-linking can be stretched at 20°C to at least three times its original length and that, after having been stretched to twice its original length and the stress removed, returns within five minutes to less than 150 percent of its original length. Elastomeric plastics may also contain fillers, extenders, pigments or rubber-processing chemicals, whether or not such plastics material, after the addition of such fillers, extenders, pigments or chemicals, can meet the tests specified in the first part of this note.

Heading 4002, HTSUS, provides for: Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip.

Chapter 40 Note 4 states that in heading 4002: "Synthetic rubber" applies to: (a) Unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-thermoplastic substances which, at a temperature between 18°C and 29°C, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of 5 minutes, to a length not greater than 1-1/2 times their original length. For the purposes of this test, substances necessary for the cross-linking, such as vulcanizing activators or accelerators, may be added; the presence of substances as provided for by note 5(b)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticizers and fillers, is not permitted;

Chapter 40 Note 5 (a) states that: Heading 4002 does not apply to any rubber or mixture of rubbers which has been compounded, before or after coagulation, with: (i) Vulcanizing agents, accelerators, retarders or activators (other than those added for the preparation of prevulcanized rubber latex); (ii) Pigments or other coloring matter other than those added solely for the purpose of identification; (iii) Plasticizers or extenders (except mineral oil in the case of oil-extended rubber), fillers, reinforcing agents, organic solvents or any other substances, except those permitted under (b).

Noxtite PA-402 is a copolymer consisting of several acrylic monomers with a high proportion of carbon fillers. As such, it is excluded from heading 4002, HTSUS, by Chapter 40 Note 5(a), quoted above.

The original dumbbell-shaped samples of Noxtite PA-402, submitted for NY F88342, dated June 30, 2000, did not meet the "synthetic rubber" requirements of chapter 40 note 4(a). Nor did they meet the "elastomeric" requirements of chapter 39, additional U.S. note 1, and accordingly were classified as an acrylic plastic under subheading 3906.90.2000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Other: Plastics.

The dumbbell-shaped samples of Noxtite PA-402, submitted subsequently, met the test for compliance with the stretch and return criteria for elastomers in Chapter 39, Additional U.S. Note 1, which also provides that elastomeric materials may contain fillers, whether or not such materials, after addition of such fillers, can meet the elongation and recovery test. Based on these test results, Noxtite PA-402 is an acrylic polymer that falls under subheading 3906.90.1000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Elastomeric.

Holding:

Noxtite PA-402 acrylic polymer is classified under subheading 3906.90.1000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Elastomeric.

Effect on other Rulings:

NY F88342, dated June 30, 2000, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Richard W. Goldberg
Donald C. Pogue

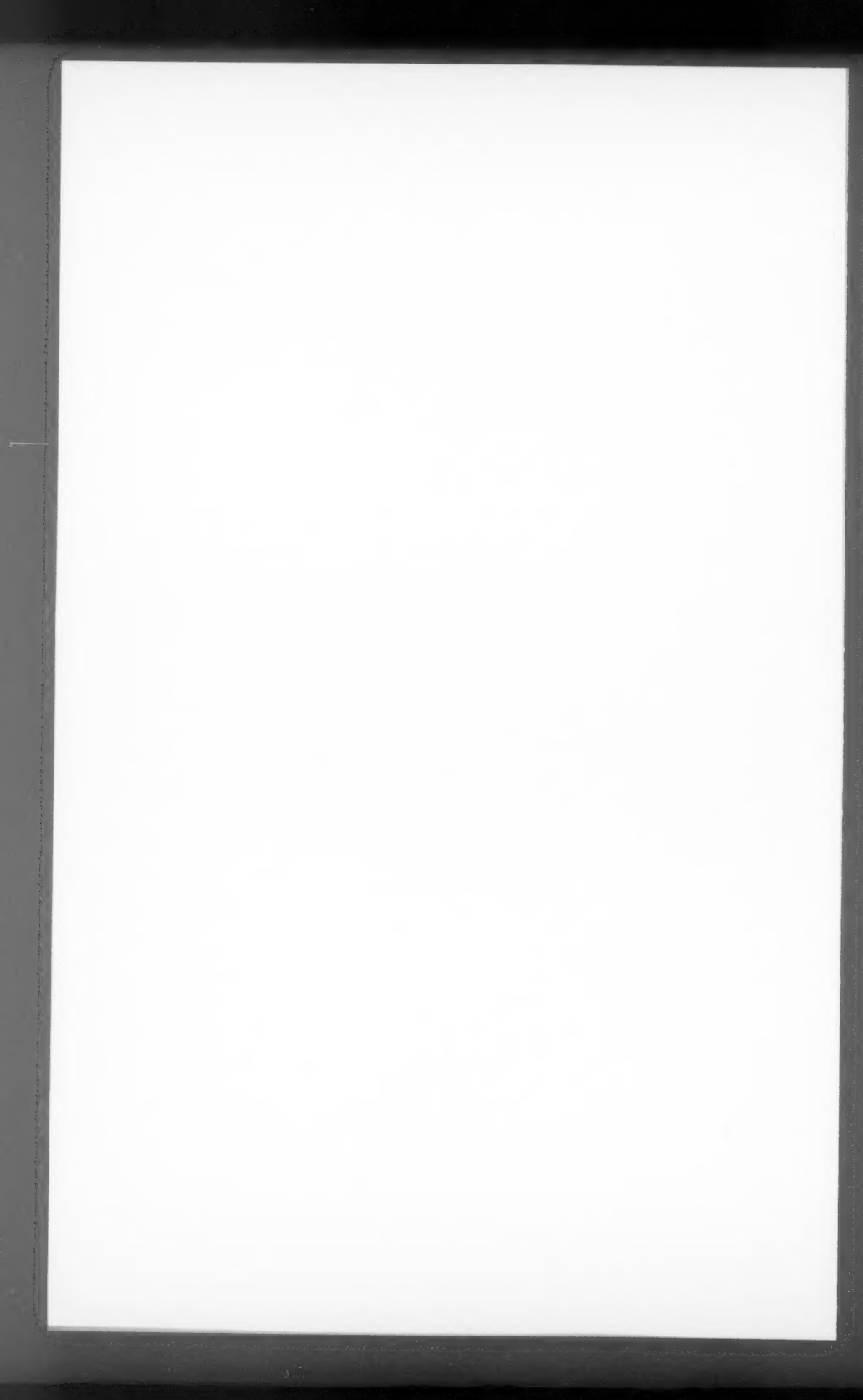
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

James L. Watson
Herbert N. Maletz
Nicholas Tsoucalas
R. Kenton Musgrave

Clerk

Leo M. Gordon



Decisions of the United States Court of International Trade

(Slip Op. 01-15)

CAMARGO CORREA METAIS, S.A., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND
AMERICAN ALLOYS, INC., ELKEM METALS CO., GLOBE METALLURGICAL, INC.,
SIMETCO, INC., AND SKW ALLOYS, INC., DEFENDANT-INTERVENORS

Consol. Court No. 91-09-00641

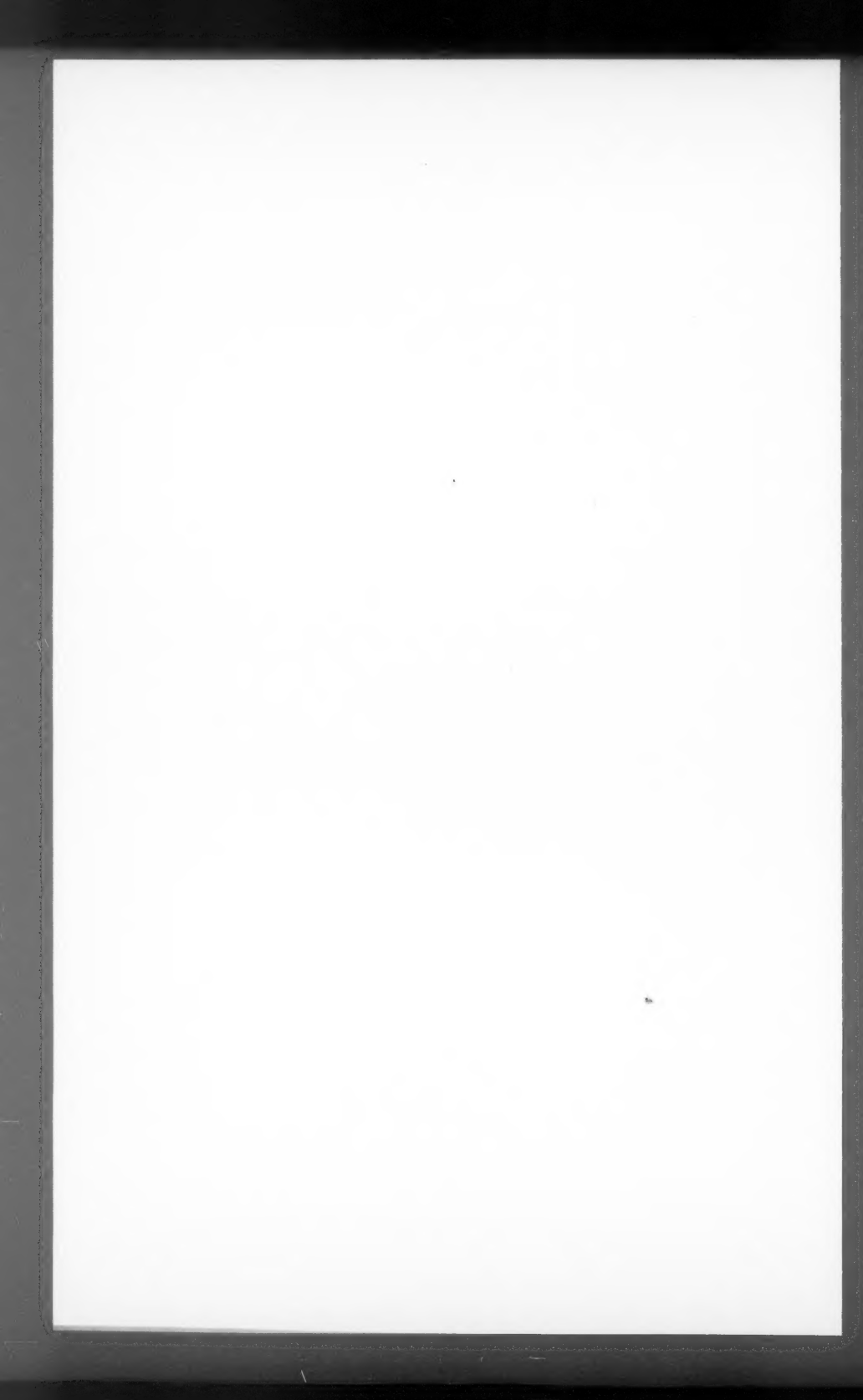
(Dated February 14, 2001)

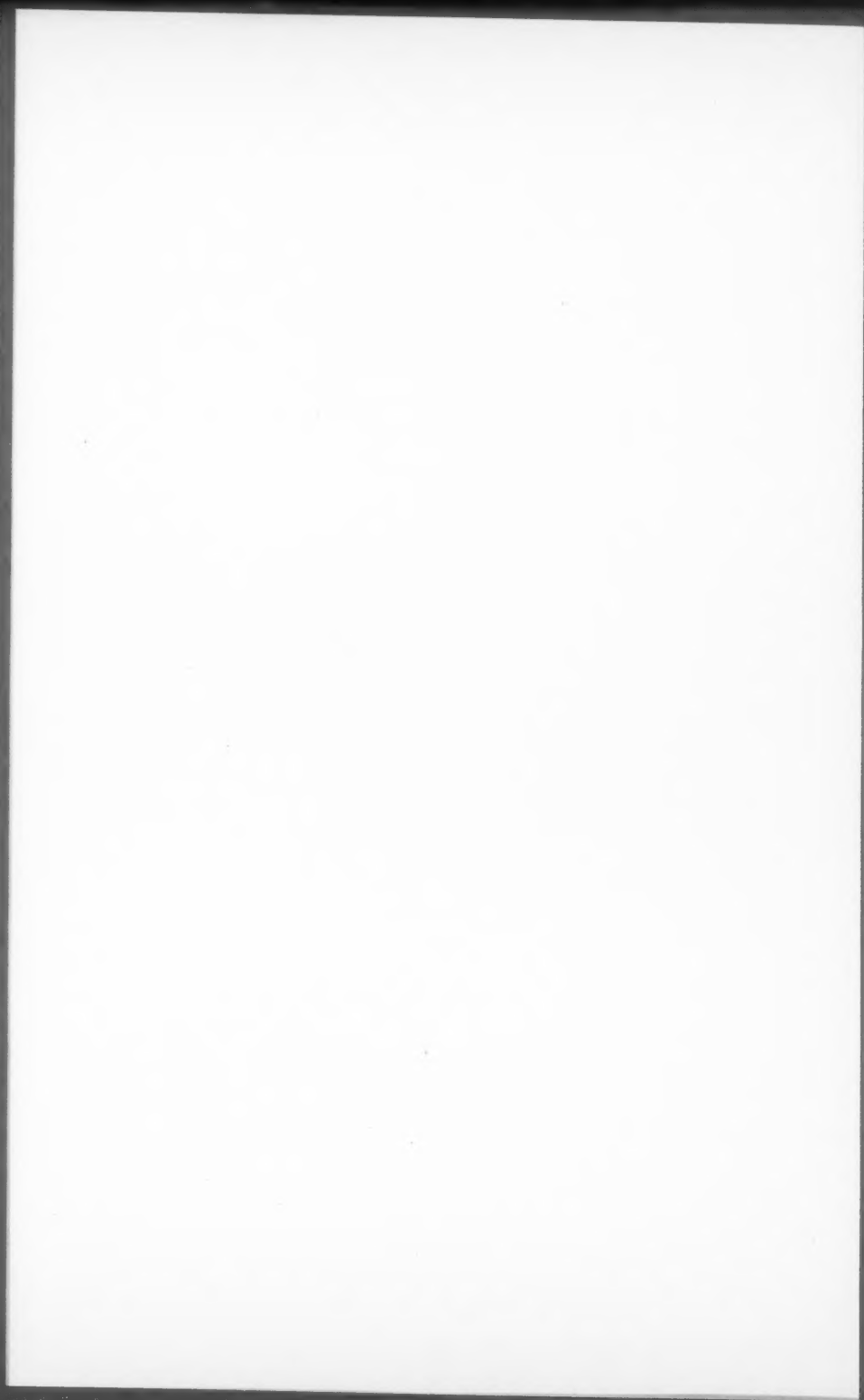
JUDGMENT

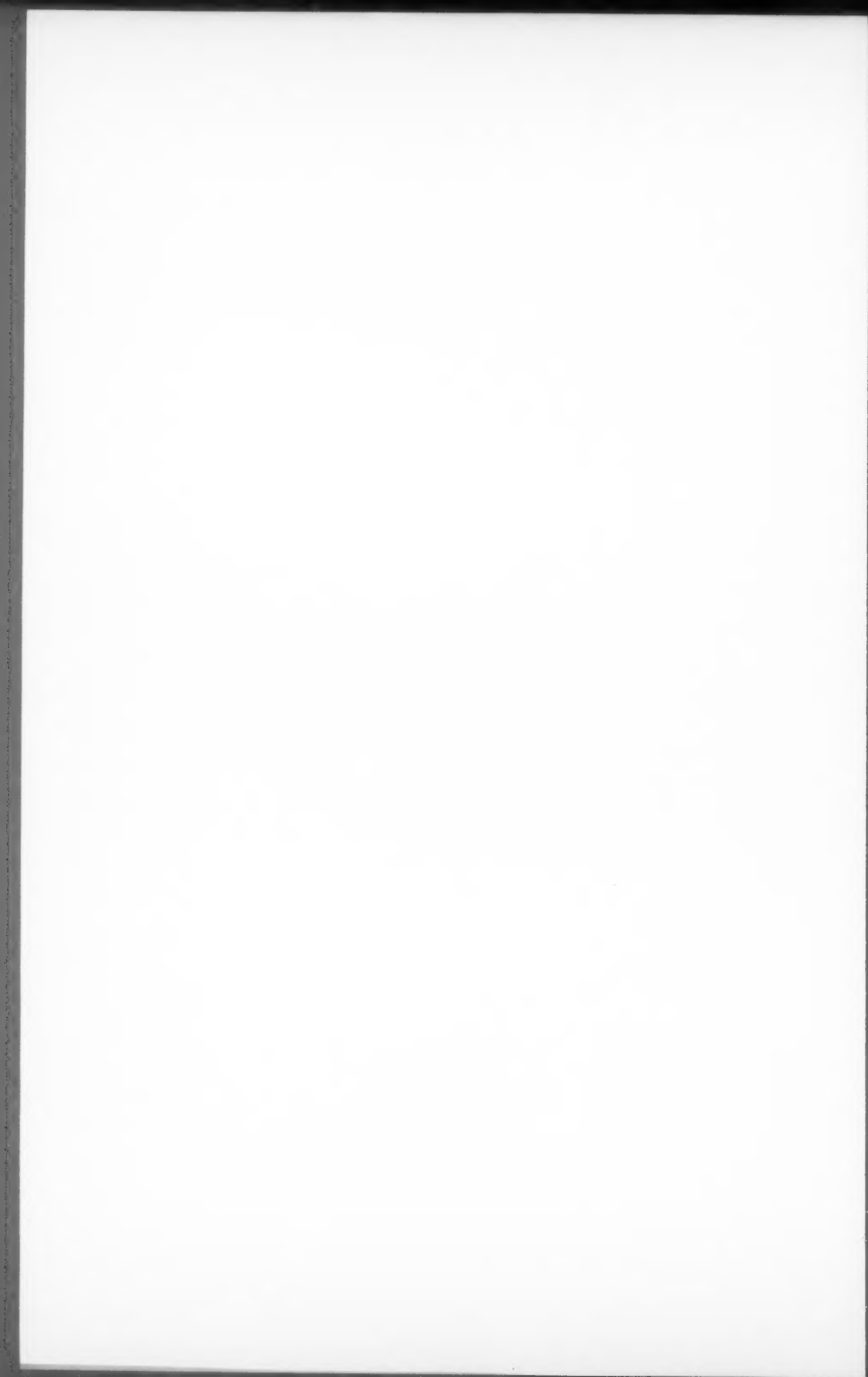
MUSGRAVE, *Judge*: This Court having received and reviewed *United States Department of Commerce Final Redetermination Pursuant to Court Remand* ("Remand Results") following *Camargo Correa Metais, S.A. v. United States*, 24 CIT ___, Slip Op. 00-96 (August 4, 2000), Defendant-Intervenors' comments thereon, and Commerce having complied with the Court's remand order, and no other responses to the Remand Results having been submitted by the parties, it is hereby

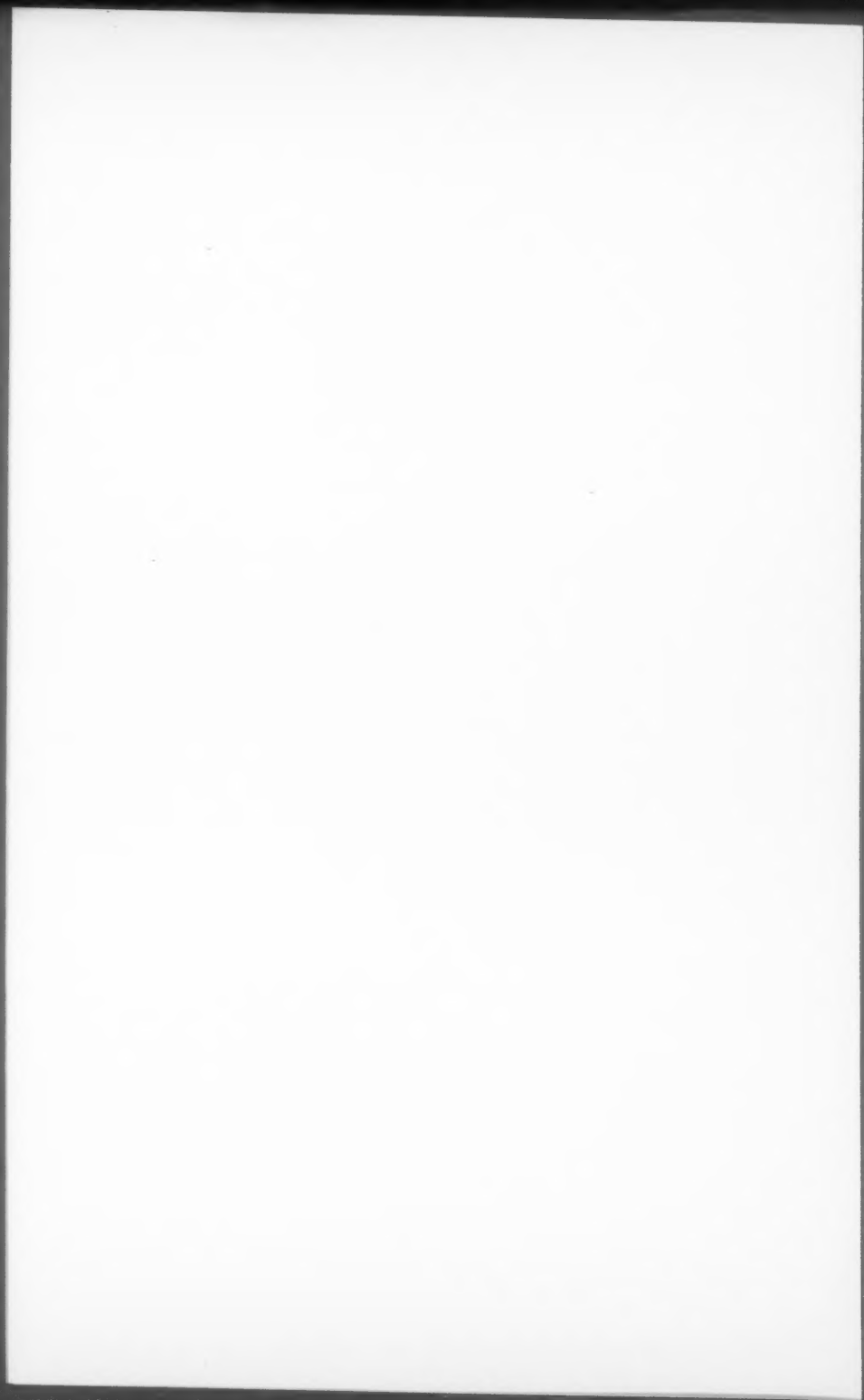
ORDERED that the Remand Results filed by Commerce on December 1, 2000, are sustained in their entirety; and it is further

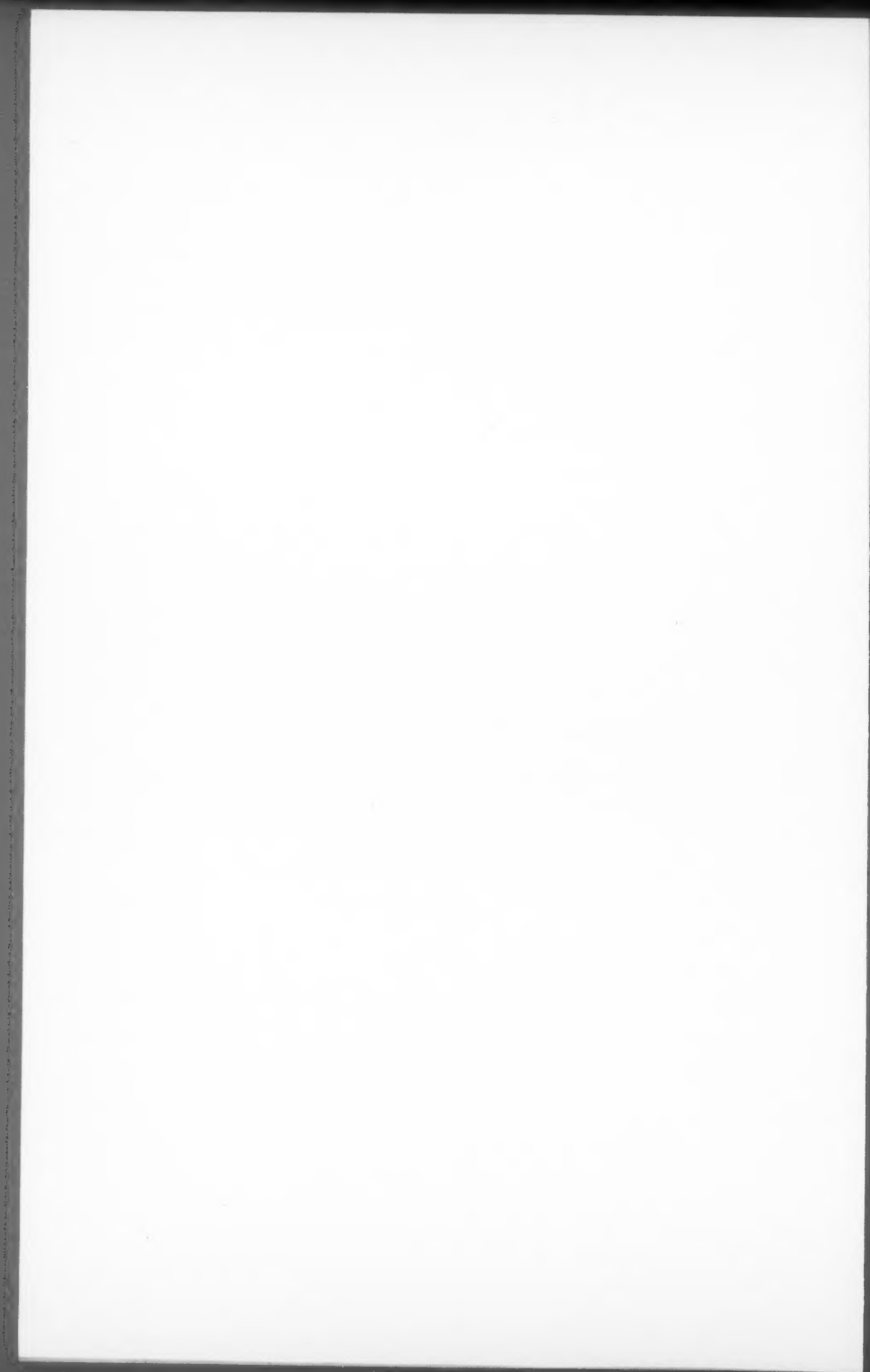
ORDERED that, all other issues having been decided, this matter is concluded.











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